

**Volume 29**

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Charles R. Breyer, Judge

UNITED STATES OF AMERICA,

Plaintiff,

VS.

**NO. CR 16-00462 CRB**

SUSHOVAN TAREQUE HUSSAIN,

Defendant .

San Francisco, California

Tuesday, April 24, 2018

## TRANSCRIPT OF PROCEEDINGS

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## CLOSING ARGUMENT / KEKER

Tuesday - April 24, 2018

9:02 a.m.

P R O C E E D I N G S

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(Proceedings were heard in the presence of the jury:)

**THE COURT:** Okay. Please be seated.

Let the record reflect all jurors are present, the parties are present.

We are proceeding with Mr. Keker's argument.

You may proceed.

**MR. KEKER:** Thank you, Your Honor.

CLOSING ARGUMENT (resumed)

**MR. KEKER:** And good morning, maybe for the last time, ladies and gentlemen.

Since I won't be talking to you again, the Government gets the last word, let me begin by saying how much I and I think every lawyer in this room, and I'm speaking for both sides, appreciate what you have sacrificed to be a juror in this case. A lot of you are traveling from a long way. You sit here through at times -- I don't want to overcharacterize it -- but tedious -- little tedious testimony at times, to serve as jurors.

You've had -- you've been patient. You've always been on time. So I want to thank you for our team, Ms. Little and Mr. Dooley and Ms. Lazarus and Mr. Marais.

I also specially want to thank you on behalf of Sushovan

## CLOSING ARGUMENT / KEKER

1 Hussain, who's our client and the person whose fate you will be  
2 deciding.

3 To fulfill the duty as jurors in this case, I said this  
4 yesterday, you're the ones who can take a fair, neutral look.  
5 Everybody else is invested in an outcome. You-all are the ones  
6 that can decide whether or not the law and the facts come  
7 together and whether or not the Government has proved the case  
8 beyond a reasonable doubt or not. So Mr. Hussain thanks you as  
9 being the bulwark against abusive or arbitrary charges or  
10 power.

11 I ended yesterday by talking about Mr. Yelland's  
12 restatement. You remember Mr. Yelland. He's the HP person who  
13 did the restatement, which he began after Hewlett Packard's CEO  
14 Meg Whitman announced that a year after the acquisition closed  
15 that Hewlett Packard had been defrauded.

16 Before that, he was working, you'll remember, working  
17 productively with Deloitte. They were almost finished with the  
18 audit of the books. Nobody had made a peep about fraud or  
19 anything. The rebasing exercise had not found -- they found a  
20 tiny bit of revenue that was not IFRS compliant, but basically  
21 they hadn't found any serious problems.

22 And then once Ms. Whitman cried fraud, everything changed.  
23 They fired Deloitte. Mr. Yelland began working with the  
24 lawyers and accountants for the HP machine that was working in  
25 London, started helping on the civil case and on this

## CLOSING ARGUMENT / KEKER

1 prosecution. The restatement was designed for litigation.

2 Jeff, could we see Slide 45?

3 And these are some of the criticisms that we have made  
4 about this restatement that Mr. Yelland worked on.

5 First of all, these are after-the-fact judgments, and we  
6 talked yesterday about the need to make a decision about  
7 revenue recognition based on the facts that are known at the  
8 time, not later.

9 Most importantly, I think, is that Mr. Yelland in reaching  
10 these judgments did not review Deloitte's work, didn't review  
11 the Deloitte work papers. He said, I think this is a quote  
12 (reading):

13 "I'm not really aware of what Deloitte did or didn't  
14 do."

15 He was reviewing the restatement of a different company  
16 than the one that Mr. -- than the Autonomy Group that  
17 Mr. Hussain was the CFO of. He was applying a different set of  
18 rules. He's an expert in U.K. GAAP, not in IFRS. That's how  
19 he was trained. He's not an expert on IFRS. So different  
20 rules, different standards.

21 As you saw yesterday, he disallowed all the reseller  
22 transactions with Capax, MicroTech, MicroLink, and FileTek  
23 without even looking at these work papers or seeing why they  
24 approved the revenue recognition for those transactions.

25 Now, he also disallowed something that Mr. Reeves spent an

## CLOSING ARGUMENT / KEKER

1 enormous amount of time on yesterday, sales with customers,  
2 back and forth with customers, which everybody has called  
3 reciprocal transactions. He simply ignored the accounting  
4 work -- and I'm going to show you some of it -- that Deloitte  
5 had done to establish fair value because that's what you need  
6 to do in these transactions. It's not the customers can't sell  
7 to each other; it's that you have to do it at fair value and  
8 assure that both sides of the transaction are properly  
9 accounted for.

10 He never -- Mr. Yelland never tried to understand why  
11 Deloitte believed that the revenue recognition requirements had  
12 been met.

13 I mentioned it yesterday, we heard a lot about this, let  
14 me show you something that Ms. Anderson said in one of her work  
15 papers when she worked at Deloitte.

16 This is a revenue recognition work paper that she was  
17 working on on the MicroLink acquisition, and what Ms. Anderson  
18 said when she was at Deloitte is (reading):

19 "It is not uncommon for companies within the software  
20 sector to purchase software off their major customers as  
21 well as selling to them and, therefore, for transactions  
22 to flow both ways."

23 That's true. All the testimony in the case establishes  
24 that. There's nothing wrong with it if each side of the  
25 transaction is at fair value, and that's what Deloitte spent a

## CLOSING ARGUMENT / KEKER

1 lot of time and energy establishing.

2 Let's talk about the MicroLink acquisition, which she's  
3 talking about here.

4 MicroLink, you remember, is this very successful company  
5 that Dave Truitt mostly owned that was in the federal space  
6 doing classified work, making federal sales, and really they  
7 were Autonomy's only access to the federal sales because  
8 Autonomy didn't have cleared people. They did have cleared  
9 people awhile earlier through their acquisition of Verity.  
10 Verity lost their clearances, and so they didn't have access to  
11 federal sales. And in the United States federal sales of this  
12 unstructured data software, you can imagine, is a huge market  
13 from the CIA, the NSA, you name it, all the surveillance  
14 agencies.

15 MicroLink was already a partner and an expert with  
16 Autonomy software. Mr. Hussain fully documented why they were  
17 buying it. MicroLink was an important acquisition and Deloitte  
18 analyzed it carefully.

19 Can we see the next slide, please?

20 Nobody in this courtroom has testified that the purchase  
21 price wasn't fair. Dave Truitt had approximately a \$55 million  
22 price in mind in the beginning. He wasn't going to sell the  
23 company for anything less. He testified that he turned down a  
24 \$45 million offer.

25 Next.

## CLOSING ARGUMENT / KEKER

1       The MicroLink -- there's much made about this MicroLink  
2       debt to Autonomy. Most of it was not overdue. I think you saw  
3       that chart that showed \$16 million at the time of the  
4       acquisition was not due yet; another \$6 million was, like, two  
5       to four days overdue.

6       MicroLink made profits. And, importantly, nobody, this is  
7       Truitt talking, nobody even talked about the MicroLink debt in  
8       connection with the purchase price and the acquisition.

9       Deloitte knew all about MicroLink's debt, and Ms. Anderson  
10      testified about the extensive due diligence that they did to  
11      make sure that this was a fair, properly accounted for  
12      transaction.

13      And much has been made of this too. Autonomy did not  
14      write off the debt. What happened was there was \$23 million in  
15      debt. They did write off 5.5 million, and that included the  
16      2.3 million that Mr. Rizek said "We'll never collect because  
17      Discover Tech is not going to buy." Their contracts with the  
18      end users continued, and Autonomy collected about \$7 million of  
19      those -- from those contracts.

20      Previously MicroLink owed \$7 million for the eDiscovery  
21      software purchase, and that was -- once Autonomy bought it,  
22      that was classified as an asset so that came off.

23      And the remaining \$9.1 million in debt was reclassified as  
24      an investment and was not written off until after -- it was  
25      written off but that was after the acquisition. I think the



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1 testimony was that that was in October of 2011. Autonomy  
2 didn't do it.

3 Now, this is also the transaction where there was  
4 testimony about grossed-up revenue, dummy cash, and so on.  
5 That was a complete phony red herring. The reason that they  
6 were talking about grossed-up revenue is that Mr. Rizek, the  
7 bank fraud man, was not putting debt on his books and was  
8 defrauding his bank. He told you he was.

9 What Autonomy, when they did the acquisition, insisted was  
10 that that debt had to go on the books and so that they provided  
11 both the debt and also the amount of the sale.

12 Mr. Hussain did not inflate the revenues. They had  
13 \$25 million in revenues. That's what he reported to the board.  
14 That's what he reported to Deloitte.

15 Let's look at some of the work that Deloitte did on this  
16 transaction.

17 And the reason I'm giving you this is because you'll  
18 see -- let me pull this out for a second. I can barely move  
19 it.

20 These are the exhibits that you can look forward to  
21 getting in the jury room. There's a lot of them and it's going  
22 to be hard to find things. They're going to be hard to roll.  
23 So, I mean, if you wanted to see the work that Deloitte did,  
24 those of you who were taking notes, 482C would be the work  
25 paper.

1 Let's look at the next one.

2 Mr. Hussain's memo on the acquisition is 351.

3 Ms. Anderson's memo on the acquisition and why it was  
4 properly accounted for is 922. And we'll go through some other  
5 transactions just like that.

6 So Deloitte gave it a good hard look. Yelland didn't.  
7 Yelland never saw what they did, but Yelland simply writes it  
8 off, writes off all the MicroLink stuff.

9 Okay. Let's go to FileTek StorHouse. You've heard a lot  
10 about FileTek. FileTek StorHouse -- FileTek was looking to  
11 grow its sales for its Trusted Edge product. You heard about  
12 that. Autonomy software solved certain technical issues. They  
13 had a license. It was going to cost them \$2500 every time they  
14 used it. They wanted to rejigger that license into an upfront  
15 license to be able to use it without paying each time they sold  
16 the product.

17 Autonomy was moving into the structured data space. It  
18 had unstructured. It was moving into structured. FileTek  
19 StorHouse was a structured data product. Autonomy's structured  
20 data offerings were important to the launch of SPE, the  
21 thing -- the structured probabilistic engine that you heard  
22 about.

23 FileTek's storage product was an important piece of the  
24 structured data strategy, and the software -- what StorHouse  
25 does is enables structured data to be stored, accessed, and

1 searched in a range of storage devices.

2 The most senior engineers at Autonomy looked at it,  
3 studied it. They determined that StorHouse was a very useful  
4 piece of technology. The exhibits show that.

5 They also determined that StorHouse could extend the reach  
6 of both SPE and Autonomy's Digital Safe product into structured  
7 data.

8 They negotiated for a 45 and at times -- I think one of  
9 them was at 55 percent discount so it was a fair price.

10 And each new license that they got when they bought  
11 StorHouse covered new Autonomy customers or new Autonomy  
12 products, like LiveVault when they bought Iron Mountain.

13 And, again, they used it. They deployed it from FileTek.  
14 The exhibits show that. They used it for Kraft.

15 Go ahead, Jeff.

16 And Deloitte -- I'm going to show you more on this --  
17 reviewed, tested, approved these purchases; and FileTek would  
18 confirm, they would sign these audit confirmation letters  
19 saying that, "Yes, we owe the money." It was a legitimate  
20 transaction, a legitimate purpose of necessary software from a  
21 partner.

22 Let's look at what Deloitte did.

23 Again, they -- there's a work paper, 482M, where they  
24 carefully analyzed the situation. They actually, I think, got  
25 a demonstration of it, and they wrote up some technical

1 material to show how it worked and why it would be better than  
2 what Autonomy had.

3 More of that, 6465.

4 The next one.

5 And then they wrote up an audit paper, 537.

6 And then they concluded -- remember there was a sale in  
7 one quarter and then a purchase in another quarter? Here's  
8 what they concluded. They knew about that (reading):

9 "To document the commercial rationale for the  
10 purchase made from FileTek during Q2 2010 to assess  
11 whether it has any impact on the revenue recognition on  
12 the license deal that was transacted in the previous  
13 quarter...

14 "Based on the information which we have obtained, we  
15 concur that the accounting for both the purchase of  
16 FileTek software and the sale of Autonomy software to  
17 FileTek is appropriate," blah blah blah.

18 They studied this. Mr. Yelland -- who knows what  
19 Mr. Yelland did, but they studied this and Mr. Yelland  
20 certainly didn't bother to find out why Deloitte approved the  
21 accounting for this FileTek purchase.

22 Same thing with DiscoverPoint. DiscoverPoint, you  
23 remember, is the product that Dave Truitt wanted to take out  
24 when he sold MicroLink and start a new company called  
25 Discover Tech; and DiscoverPoint was the software that went

1 into something called DiscoverEngine, which is what  
2 Discover Tech was going to sell to the market.

3 They needed -- this is what -- and this goes back to the  
4 profiling software. This is the product to work with IDOL,  
5 they needed profiling software, and that went through the  
6 \$2.3 million that we talked about yesterday.

7 But the point here is, DiscoverEngine using IDOL was an  
8 important product because MicroTech's SharePoint -- and I wish  
9 I could tell you more what SharePoint is, but it's a terribly  
10 important organizing tool that Microsoft users use. This  
11 product was the only one that was Microsoft certified for  
12 SharePoint.

13 They sold DiscoverEngine to big companies. Even Autonomy  
14 had a similar product but it wasn't as good. Everybody's  
15 testified that it wasn't as good. And, as I said, the  
16 DiscoverEngine was Microsoft certified and Autonomy's product  
17 wasn't. That's why they needed it.

18 And it was fairly priced. The contract was between  
19 Autonomy and Discover Tech. Autonomy got the right to  
20 distribute a certain amount of instances. And an instance is  
21 an infinite number of people or a huge number of people but one  
22 time. So if you're at Blue Shield or something, you could buy  
23 one instance and everybody at Blue Shield can use it.

24 The distribution agreement was more valuable than a  
25 regular sale. As I said, the single instance can have

1 thousands of users. They have the right to use DiscoverEngine  
2 in every IDOL sale making IDOL, the software, more profitable.

3 And Truitt testified that not only did Autonomy buy this  
4 product at fair value but it actually got a steep discount.  
5 And when the Government tried to compare it to another sale  
6 that they had done to Tech Resources, Truitt said, "No, that's  
7 apples and oranges," and it was.

8 And, again, Deloitte -- I won't go through their work  
9 papers, but Deloitte studied it, approved it, looked at whether  
10 or not it made sense for them to buy it.

11 Mr. Welham testified that it would have been relevant if  
12 he had known that Autonomy had no use for DiscoverEngine, but  
13 I'm sure it would be relevant but it did have a use for  
14 DiscoverEngine, and that was testified to by a number of  
15 people.

16 Autonomy engineers said it was a good product.  
17 DiscoverEngine would speed up the search indexing; and if you  
18 had a big job, like Autonomy's customers often did,  
19 DiscoverEngine would be very valuable.

20 Is there one more on that? No.

21 Okay. Let's move on. I know I'm doing these quickly, but  
22 you're probably happy I'm doing them quickly.

23 Let's move on to the ATIC. Much has been made of the  
24 ATIC. Remember, MicroTech built this platform that was going  
25 to be a showcase for products to classified users where they'd

1 be able -- you'd come in in a cleared environment -- the CIA  
2 could come in, the National Reconnaissance Office could come  
3 in, the Homeland Security office could come in -- and get a  
4 demonstration of what these products could do for them. This  
5 was a very valuable proposition to people who wanted to do  
6 business in the federal space.

7 Dave Truitt pitched the idea to Mr. Scott and Mr. Hussain  
8 at a dinner in New York. There wasn't any mention during that  
9 dinner of any debt or repayment of debt or anything else. This  
10 is months after the Vatican transaction. Mr. Hussain said to  
11 Scott, "You negotiate. You know, you be the one to negotiate  
12 with Dave Truitt."

13 The pricing, which Scott negotiated, rewarded extended  
14 terms. They picked the one that came at the biggest discount,  
15 which was the three-year deal. Most of that money, the  
16 9.6 million, were salaries, and you could see that in the  
17 workup of the pricing.

18 Pete Menell, who was the chief technology officer, told  
19 Mr. Hussain that the price was reasonable. Scott, who  
20 negotiated it, agreed with him. That's in Exhibit 6298. And  
21 Dave Truitt testified that the deal was fairly priced.

22 So ATIC was built and used. They collaborated. There was  
23 a grand opening attended by a whole lot of people. They built  
24 a portable data center in the basement of their building.

25 Next. Whoops.

## CLOSING ARGUMENT / KEKER

1       Okay. And you'll find in the Deloitte work papers that  
2 Deloitte was all over ATIC, looked at it, understood it, and  
3 approved the accounting for it.

4       Okay. The next one, the next what they call reciprocal  
5 deal that they've criticized, is this federal cloud project.  
6 The federal cloud -- what -- FISMA was a federal regulation  
7 that said before you can put federal data -- Social Security  
8 data, any kind of secure data, any kind of personal data --  
9 into the cloud, we want it to meet certain requirements. And  
10 the requirements were under FISMA, and I don't know what it  
11 stands for but that's what FISMA is about.

12       And so Steve Truitt knew that Autonomy was doing business,  
13 for example, with the Social Security Administration and trying  
14 to sell more software to them and knew that they would need a  
15 FISMA-certified product, and so he worked up -- had  
16 Dr. Channing, a very well-credentialed man, work up a proposal,  
17 and he had been pitching this cloud technology to them for a  
18 while and finally he got the federal cloud proposal.

19       It was designed specifically for Autonomy. It addressed  
20 Autonomy's issues with the Social Security Administration  
21 contract. The proposal was for two different solutions. One  
22 was hosted, that means using Autonomy's servers; and the other  
23 was on premises behind a firewall. And, as I said,  
24 Dr. Channing designed these two solutions.

25       Next.



1 Mr. Hussain told Mr. Egan to review the Autonomy contract  
2 with the Social Security Administration to verify that the  
3 federal cloud would work. He also asked him to help negotiate  
4 the price down.

5 Pete Menell said that there was no other -- no fast way  
6 for Autonomy to get certified, FISMA certified. This was the  
7 best way.

8 Steve Truitt testified that he honestly priced the federal  
9 cloud proposal at 8.2.

10 Joel Scott, again, was the one that was assigned to  
11 negotiate this price, not Mr. Hussain.

12 And they built it. MicroTech had the capacity. Tony  
13 Jimenez, who was the head of MicroTech, was shopping around for  
14 a data center for hosting. Steve Truitt knew from the e-mails  
15 that we showed him -- he said he'd forgotten all about this,  
16 but we showed him e-mails showing that as late as March 2012,  
17 this is six months after the acquisition, they were still  
18 working on it and they expected the project to be completed  
19 March 1st.

20 And then this is the one that had the assignment clause.  
21 I'm not sure -- we didn't hear about that from Mr. Reeves, but  
22 in this contract, Mr. Truitt insisted apparently on an  
23 assignment clause that said "You can't assign this to anybody  
24 else and if you do, we don't have to perform."

25 They made a big deal about that, but there's no evidence

1    whatsoever that anybody invoked the assignment clause, that  
2    anybody once the sale happened to Hewlett Packard, anybody  
3    said, "We're not going to build this because of the assignment  
4    clause." They were still working on it after Hewlett Packard  
5    had done it. So that is a red herring as far as I'm concerned.

6           And then, lastly, of these deals that were talked about  
7    yesterday, this is the MicroTech/Bank of America situation  
8    where MicroTech bought software for Autonomy to use for  
9    services work with the Bank of America, and the Government and  
10   apparently Mr. Yelland has criticized that revenue recognition.  
11   Again, Deloitte knew all about it and approved it.

12           Bank of America, if you'll remember, there was going to be  
13   a \$19.5 million sale to Bank of America. It didn't close at  
14   the end of the year. It did close in February of the following  
15   year. The sale was made to MicroTech who then bought the  
16   software from Capax and from Discover Tech who had bought it  
17   earlier, and MicroTech sold it to the Bank of America.

18           Steve Truitt said that they did get -- the reason that  
19   MicroTech wanted to do it is that they wanted services work  
20   with the Bank of America. Bank of America would buy Autonomy  
21   software and MicroTech would hope that they could get services  
22   work on that software.

23           So they bought some more software from Autonomy. Autonomy  
24   told Deloitte that MicroTech was going to use this software to  
25   provide support services to Autonomy's customers. Deloitte

1 said that was fine.

2 Autonomy assigned the Bank of America services work to  
3 MicroTech -- that's what the Government is apparently  
4 complaining about -- just as they told Deloitte that they were  
5 going to do, and that the whole thing worked out.

6 Bank of America wanted to do more reseller deals with  
7 MicroTech. They were very excited about being able to work  
8 with an 8(a) vendor, and they thought it was a good deal.

9 So all of those reciprocal sales, which Mr. Yelland has  
10 just wiped clean off the slate, were properly accounted for,  
11 reviewed by Deloitte, and are not a problem in the accounting  
12 is our position.

13 The prosecutors need to prove that Mr. Hussain had some  
14 criminal intent, some intent to deceive people. It hasn't done  
15 that, ladies and gentlemen.

16 What the Government has proved is a dispute between  
17 accountants. They've proved a dispute between Deloitte, who  
18 knowing what they needed to know said that the revenue  
19 recognition that Mr. Hussain presented to them was correct and  
20 signed off each quarter and said it was satisfactory on the  
21 one -- and doing it at the time, and there's a dispute between  
22 those accountants and Mr. Yelland, who is backed up by all the  
23 Hewlett Packard lawyers and accountants and people working on  
24 the civil case trying to make their fraud claim, who says --  
25 who came along later and basically is trying to create evidence

1 to support that case. It's a dispute between accountants.

2 And to paraphrase a very famous lawyer, the late  
3 Johnnie Cochran: If the accountants disagree, Sushovan must go  
4 free. He was entitled to rely on the auditors who approved  
5 Autonomy's accounts, and that was Deloitte.

6 Before moving on to discuss hardware, I want to tie up  
7 some loose ends. There's so many deals in this case that I'm  
8 afraid I've got to do it, so let me talk about transactions  
9 that were -- that are part of the Government's attack on  
10 Autonomy's accounting and the sign-off by Deloitte.

11 Auxilium is the first one. Auxilium -- there's not  
12 evidence that Auxilium is backdated. Nobody came in here and  
13 testified about Auxilium. Nobody testified that it was  
14 backdated. The Government didn't offer testimony from the  
15 people who were directly involved.

16 And you see who was directly involved. Not Sushovan  
17 Hussain. There's the salesman named Broli; there's the  
18 Autonomy lawyer Julie Dolan; there's the Autonomy lawyer Andy  
19 Kanter; and there's witnesses from Auxilium, Luca Mastroianni.

20 Next one.

21 The best evidence that we have is that the agreement was  
22 reached on or before the end of the quarter, March 31, 2010.  
23 The reseller agreement is dated that date. That's 2788 at  
24 page 47. Again, some of these documents, to find the relevant  
25 piece of it is going to be a chore.

1 Proof of delivery is dated March 31, 2010, in that same  
2 document, page 8.

3 There's an audit confirmation letter that's signed saying,  
4 "Yes, we owed the money and it was due that date."

5 This is independent third-party evidence that the deal was  
6 reached at the end of the quarter. The audit confirm was sent  
7 directly to Deloitte, and here's the exhibit number.

8 And what the Government is relying on is a March 31 e-mail  
9 and a draft VAR agreement, but you already know that Autonomy  
10 was negotiating with multiple resellers, not just Auxilium.  
11 What they showed you is a draft and, anyway, various e-mails do  
12 not -- that don't involve Mr. Hussain and don't show that the  
13 transaction was agreed to after the quarter. These e-mails  
14 don't show that.

15 So let me go to the next one.

16 Sales Consulting, also one about which you've gotten no  
17 evidence except on paper. The Sales Consulting contract was  
18 dated December 31, 2009. It says "Effective Date" on it.  
19 Delivery was confirmed by Sales Consulting as December 31,  
20 2009. Deloitte audited the transaction. There are the  
21 numbers.

22 And there was no attempt to mislead Deloitte. When the  
23 contract says effective date is December 31, there's been  
24 testimony that sometimes paperwork comes in later. When Andy  
25 Kanter signed this, he dated it January 15, 2010. He didn't

1 make any effort to try to pretend like he had signed it on some  
2 date before the end of the quarter. The point was the deal was  
3 made in Italy before the end of the quarter and whatever  
4 paperwork he had to sign, he signed later. That wasn't hidden  
5 from anybody.

6 No witness testified that the agreement was reached after  
7 December 31. No witness has been here to talk about this deal.  
8 The e-mails only show that the agreement was documented later.

9 And the spreadsheet is completely inconclusive evidence.  
10 Matt Stephan said it was frequently the case that paperwork on  
11 deals didn't even arrive at Autonomy's office until after the  
12 close of the quarter. There's nothing wrong with that as long  
13 as there was a final fixed agreement by the end of the quarter,  
14 as there was here.

15 The next one that they talked about, the next loose end I  
16 want to talk about is this Tikit/KPMG business. There's  
17 absolutely nothing wrong -- again, Yelland disallowed this, but  
18 there's nothing wrong with Autonomy's sale to Tikit as a  
19 reseller. It was a noncancelable contract. They delivered the  
20 software. Tikit reported the software in its inventory. The  
21 deal went direct eventually with KPMG but Tikit was still on  
22 the hook and had to pay.

23 Mr. Araujo said (reading):

24 "Q. So whatever happened with KPMG or didn't happen with  
25 KPMG, Tikit owned the Autonomy software and owed Autonomy

1 for the software; right?

2 "A. That's correct."

3 And Tikit, in fact, paid Autonomy back in full for the  
4 software that it purchased.

5 And then there's the side letter business. Mr. Hussain  
6 told three lawyers that he was going to disclose the side  
7 letter to the accountants. If you look at 1708B, it is  
8 perfectly plain that Chamberlain did disclose the side letter  
9 because they're talking about the contents of the side letter.  
10 They don't call it a side letter, they don't do anything, but  
11 they're talking about what the provision is in the side letter  
12 about Tikit's ability to do something with the software and get  
13 services and so on. So 1708B shows that they knew about that.

14 Eventually they obtained the side letter, and we don't  
15 know where it was. It was supposed to be in the file, but  
16 eventually they got the side letter from Tikit and it didn't  
17 change the accounting and Deloitte thought that the deal was  
18 fine.

19 And then, finally, in this string of loose ends, I want to  
20 talk about Morgan Stanley. And, first, I want you just to step  
21 back and imagine Mr. Apotheker thinking about buying Autonomy,  
22 which was valued at \$6 billion, and he's going to buy it for  
23 almost \$12 billion, and he thinks it's going to be worth 17 or  
24 \$46 billion, I want you to imagine Mr. Apotheker, just get your  
25 head around Mr. Apotheker worrying about whether or not the

1 hardware was delivered in Q2 or in Q3. It's not something  
2 that's very easy to even imagine.

3 But in this instance, Mr. Hussain thought that the  
4 hardware to Morgan Stanley had been delivered as he was told it  
5 was delivered in the second quarter of 2009. We now know that  
6 some of this hardware was delivered later.

7 But what he knew, this is from his point of view, he knew  
8 that Autonomy had bought a surplus of EMC hardware. They just  
9 had a \$9 billion purchase. They knew that Autonomy had paid  
10 for the hardware. They knew that Morgan Stanley, who had  
11 wanted Hitachi hardware, had agreed to generic hardware from --  
12 Mr. Egan had changed the purchase order, said they didn't have  
13 to provide Hitachi; they could provide anybody that could do  
14 the job.

15 He knew that delivery -- or if he knew, but if he looked  
16 at it, he would have known that delivery occurs under the terms  
17 of this contract when the product is shipped. And EMC -- he  
18 knew that EMC had promised to ship the products on or about  
19 June 29, 2009. That's Exhibit 3022.

20 And he knew that Morgan Stanley confirmed receipt of the  
21 order by July 2, 2009. That's Exhibit 130.

22 So he believed that the hard -- that EMC had done what  
23 they said they would do and delivered the hardware on or about  
24 June 29, 2009.

25 He had no reason to believe that these weren't proper



1 sales made timely and that the accounting for the quarter was  
2 not right. They don't establish any intent on his part to  
3 deceive anyone nor are they material to anything.

4 Okay. We've heard a lot about something called SPE. I'm  
5 going to quickly talk about that. I still don't understand  
6 what the prosecutors claim is wrong about that, but -- wrong  
7 about the accounting, but here's SPE.

8 It applies the IDOL software to structured data. It was  
9 going to be the Holy Grail because they were going to have --  
10 and this is what HP thought the Holy Grail was too. You have  
11 something that can handle unstructured data, you combine it  
12 with something that can handle structured data, and you can  
13 take over the world of business intelligence.

14 Mr. Blanchflower called it radical, a technological shift,  
15 a huge new product line. It was included in a lot of Autonomy  
16 contracts. Hewlett Packard in these exhibit numbers you'll see  
17 saw that was part of the basis for the synergies with SPE.  
18 They were going to combine SPE and Hewlett Packard software and  
19 the Vertica structured data company and things were going to be  
20 great for them.

21 And the research and development capitalization was  
22 proper. They made a big deal about the research and  
23 development, about how they only spent -- I don't know --  
24 100,000 or something, but they had all these research and  
25 development costs. Mr. Blanchflower recognized that all of the

1 work they'd been doing on SPE -- on IDOL over the years was  
2 properly viewed as going into SPE. It wasn't just the launch;  
3 it was all the improvements that they'd been doing to IDOL,  
4 which made SPE what it was. The audit memo, 229, explains why  
5 it should be capitalized.

6 They actually went to His Majesty's -- HMRC is His  
7 Majesty's Revenue Service, I think, and they had changed the  
8 rules and they expanded what research -- how research could be  
9 capitalized and approved this, so they applied those rules.

10 Deloitte sampled and tested the engineer time. Figured  
11 that 75 percent of the engineers' time should be -- from their  
12 time sheets could be attributed to this.

13 And then, this, I think, is important. Deloitte thought  
14 this was hard enough and complicated enough so that they took  
15 it out of their audit team and sent it to their national  
16 accounts technological people, and they reviewed and approved  
17 it.

18 And then, finally, all the documents about this indicate  
19 that it was Ms. Prentis, Poppy Prentis; Mr. Chamberlain,  
20 Deloitte; and so on. Mr. Hussain really wasn't much involved  
21 in making these decisions. He's not apologizing for them. He  
22 thinks they were right, but he wasn't doing it.

23 Okay. Those are loose ends.

24 Now, the prosecutors and the HP machine, I think, have  
25 found mistakes that are just that, mistakes, and I'm going to

1 talk about them. Let me start by saying these mistakes --  
2 there's no evidence that Mr. Hussain made these mistakes.

3 One is the statement that Deloitte -- to Deloitte that  
4 Discover Tech was an 8(a). Remember MicroTech is an 8(a),  
5 Service Disabled Vendor that gets special privileges when  
6 you're bidding on contracts with the federal government. We  
7 don't know who made the mistake, but we do know that people at  
8 Autonomy referred to all of the resellers as 8(a)s.

9 And here's an e-mail that you've seen before where  
10 Mr. Hussain is writing to Joel Scott asking (reading):

11 "8(a) deals, could you please send a list?"

12 And from the deals you can tell that he's referring not  
13 just to MicroTech but anybody -- but to these other resellers,  
14 or at least that's the way Mr. Scott responds because he has  
15 MicroTech deals, Discover Tech deals, Capax deals in the  
16 response. So we don't know who gave the erroneous information,  
17 but there's no -- there's no indication that it was  
18 Mr. Hussain.

19 Can we see Slide 38?

20 Deloitte thought that Discover Tech was an 8(a) reseller  
21 but they said it was not material to Deloitte's analysis. They  
22 considered it only for additional assurance. That's 1945D.

23 And, as I said, there's simply no evidence that  
24 Mr. Hussain was responsible for this mistake, but it was a  
25 mistake.

1 Okay. The other mistake that I want to talk about is in  
2 the FRRP letter that Mr. Lindsell came and testified about, and  
3 that's a statement that MicroTech and Discover Tech have  
4 separate shareholders. There's no evidence that Mr. Hussain  
5 knew that Dave Truitt was a minority shareholder in MicroTech.

6 Tony Jimenez was the face -- remember, it's a veterans  
7 disabled and so on. Tony Jimenez is the face of MicroTech.  
8 Nothing on the website talks about who the minority  
9 shareholders are. The Government used Exhibit 3049 to prove  
10 that Mr. Hussain knew that Dave Truitt was a minority owner.  
11 Let's look at that.

12 Look at the bottom e-mail. This is from John Cronin.  
13 This is from 2004, ladies and gentlemen. And Cronin is writing  
14 to people that you don't really know about and says that  
15 (reading):

16 "MicroTech is a 'small service disabled'" -- this is  
17 when MicroTech is just getting started -- "'small service  
18 disabled veteran owned" company, a special designation  
19 that allows the government to buy with less competition  
20 and procurement hassles. This company is partially owned  
21 and sponsored by MicroLink. Dave Truitt has requested  
22 that we allow MicroTech to become a reseller."

23 And then you go up to the top back in 2004, and somebody  
24 writes -- Jodi Irwin writes to Sushovan Hussain saying  
25 (reading):

1 "Tiny reseller MicroTech who wants to be our partner  
2 has no D&B report" -- Dun & Bradstreet I assume -- "on  
3 which to base a credit evaluation - John seems to indicate  
4 that MicroLink would be willing to provide a guarantee,"  
5 and so on.

6 That's the Government -- that's the 2004 evidence that  
7 they rely on that Mr. Hussain in 2010, when that FRRP letter  
8 was written -- yeah, '10 or '11, I can't remember; I think it  
9 might be '11 -- was knowledgeable about Dave Truitt's minority  
10 stake. That is just the way -- I mean, first of all, it  
11 doesn't say that Dave Truitt owned shares in MicroLink. It  
12 says -- what it says -- in MicroTech. I'm confusing myself.

13 What it says is that MicroLink was a partial owner of  
14 MicroTech. And by the time the letter was written, MicroLink  
15 was owned by Autonomy, and they certainly knew when they were  
16 owning MicroLink that they didn't have any shares, they didn't  
17 have a stake in MicroTech. So this doesn't begin -- if you  
18 even remembered it that many years later, this doesn't begin to  
19 indicate that Mr. Hussain knew that Dave Truitt was a minority  
20 shareholder.

21 This isn't the kind of evidence that shows Mr. Hussain  
22 deliberately deceiving anybody; and when the Government  
23 stretches that far to make its case, you ought to be  
24 suspicious.

25 And, by the way, there is no related-party issue in the

1 accounting sense. You've seen some e-mails that talk about  
2 related party in the accounting sense. So failure to disclose  
3 that Dave Truitt was a minority owner was completely  
4 immaterial.

5 By 2009, this tiny little company MicroTech had grown into  
6 a behemoth with Tony Jimenez being the face of it. It was,  
7 you'll remember, the fastest growing Hispanic-owned company --  
8 that's the way they billed themselves, Hispanic-owned  
9 company -- in the United States, the fastest growing company in  
10 the Washington, D. C. metropolitan area.

11 Here's what Steve Truitt said about it, he was the  
12 vice president (reading):

13 "Q. Can you tell us about the growth? Take us to 2009.

14 "A. It was literally exponential. It's difficult to  
15 remember now when we hit what marks, but I think in 2006  
16 we went from 1 million to I'm going to say something like,  
17 because I don't remember the numbers well, but we probably  
18 quintupled in size to 5 million and then the next year  
19 probably tripled and then the year after that we were  
20 approaching 100 million; and then a year or two after  
21 that, we were over 250 million, so we had explosive  
22 growth."

23 The reason there is no related-party issue is that Dave  
24 Truitt, as a minority shareholder, had no responsibilities and  
25 no control of MicroTech; and that's what Steve Truitt, his

1 brother, testified.

2 Dave Truitt testified that he was simply a liaison, not  
3 even part of the team. Decisions were made by Tony Jimenez.  
4 Truitt -- Dave Truitt testified that he always had to ask Tony  
5 or Steve about Autonomy deals, which is exactly what he did in  
6 this case. You know that. He had a passive ownership and no  
7 control over MicroTech; therefore, there is no related-party  
8 issue.

9 And Ms. Anderson testified that even if they were related  
10 parties, that doesn't mean revenue recognition was wrong. That  
11 just means if transactions had commercial substance and they  
12 were done at value, then it could be correct, which was the  
13 case here.

14 But, most importantly, there's no evidence that  
15 Mr. Hussain knew about Dave Truitt's minority stake when that  
16 FRRP letter said MicroTech and Discover Tech have different  
17 offices, drew different -- I can't remember all the things they  
18 said were different but one of them was different shareholders.  
19 He didn't know about the minority stake so that was a mistake.

20 So that brings me to -- let me finish. Go back to that,  
21 Jeff -- finish on this FRRP letter.

22 Remember that that letter was reviewed extensively, and  
23 these exhibits are the ones that show it, by Deloitte and they  
24 went over Autonomy's responses. They made suggestions about  
25 changing things. Mr. Welham testified that if he thought

1 anything in it was wrong, he would have said so.

2 Mr. Chamberlain told there's a response about how much  
3 Discover Tech owes. Look at this e-mail from Mr. Chamberlain  
4 to Mr. Hussain who says exactly that, that "Discover Tech owes  
5 us \$1.4 million." That's 6644.

6 And then I've already talked about the mistake about  
7 Discover Tech and MicroTech minority ownership.

8 So that brings me to hardware. There's no dispute that  
9 hardware was properly recognized, that the revenue for hardware  
10 was properly recognized. Even Mr. Yelland agrees with that and  
11 did not remove the hardware revenue from his restatement.

12 It was proper to recognize revenue from hardware sales on  
13 a gross basis. That exhibit reflects that the hardware -- that  
14 was the big summary exhibit -- reflects that the hardware  
15 revenue was properly recognized as revenue. So there's no  
16 dispute about that.

17 There's also no dispute that the auditors at Deloitte knew  
18 all about the hardware sales, hardware sales at a loss and so  
19 on, and decided that because Autonomy had only one operating  
20 segment, as that term has been provided to you and defined, it  
21 did not need to be reported as a separate item.

22 They knew that EMC and Dell hardware were sold at a loss.  
23 They knew that hardware was sold without software physically  
24 being placed on it. They knew that the hardware included  
25 laptops that you've seen. They knew that they sold to existing



1 EMC and Dell customers. They knew that they sold through  
2 resellers. SHI was the reseller for the Bank of America and  
3 Zones was H&R Block. You remember that.

4 Deloitte knew all of that and they approved Autonomy's  
5 revenue disclosures. They demonstrated that it has one  
6 segment. That was the key to it. If it has more than one  
7 segment, then you have to break out your products into the  
8 segments, but this was a one-segment company.

9 Deloitte said (reading):

10 "Autonomy has been selling hardware products at an  
11 overall loss as part of a wider strategic move to secure  
12 additional license revenue. We conclude that the  
13 strategic hardware sales would not constitute a separate  
14 operating segment under IFRS 8."

15 This is exactly what you've been told. This was a program  
16 of strategic sales to try to sell more software. I'm going to  
17 show you more about that in a minute. And in the books they  
18 list sale of goods, and that includes -- so the money for the  
19 hardware is included in the books.

20 They discussed it with the Audit Committee and, once  
21 again -- yeah, they discussed it with the Audit Committee  
22 (reading):

23 "Q. Was the Deloitte audit team comfortable with the  
24 level of disclosure made by Autonomy with respect to  
25 hardware sales?

1       **"A.** Yes. We could accept the level of disclosure  
2       provided."

3       So looking at the financial statements and looking at the  
4       annual reports, Deloitte was satisfied that what was being  
5       disclosed was a fair picture and a proper picture of Autonomy's  
6       finances.

7       There was nothing misleading about Autonomy calling itself  
8       a pure software model since everything about it was geared to  
9       software sales, not to providing services. That's what  
10      everybody has testified about.

11      Mr. Welham said he understood the reference to pure  
12      software model distinguished it from professional services  
13      (reading):

14             "You didn't mean that to understand the sentence  
15             would mean that Autonomy only sold software?"

16      He didn't understand it that way. (reading)

17             "And you didn't believe the statement was misleading  
18             in any way in light of the Autonomy hardware sales?

19             "I did not, no."

20      This idea, this really is kind of a thing that's been made  
21      up. The use of the words "pure software model" in an annual  
22      report that distinguishes it from selling services, which they  
23      did because they list "We sell services," and distinguishes it  
24      from selling hardware, which they did because they talk about  
25      appliances -- and in a minute I'm going to show you them

1 talking about hardware explicitly -- doesn't make it any --  
2 this hyperbolic word about "We're a pure software company" when  
3 at the same time you're telling people that purity doesn't get  
4 you 100 percent, purity gets you most of the way, our goal is  
5 to sell software, not to do anything else, and that was true.

6 The dispute, then, is not that the auditors knew about it,  
7 not that it was properly accounted for, but was it because they  
8 weren't broken out in public filings was Hewlett Packard  
9 somehow misled. And so let's go back to the undisputed facts.

10 Let's talk about, first of all, what do the public filings  
11 of this company say. If you wanted to buy it, you'd think  
12 you'd read the public filings.

13 Back in 2009 with Deloitte's approval, they talked about  
14 (reading):

15 "During the quarter, we saw some of our larger  
16 customers promote Autonomy to strategic supplier status.

17 This has led them to adopt a broader set of solutions in a  
18 number of significant deals."

19 This is the quarter when there's a lot of hardware sales.

20 The next reference in the earnings release in Q4 '10,  
21 they've been talking about a small number of customers with  
22 package solutions, construction of services, hardware, and  
23 software, such as Arcpliance. Not only Arcpliance, not only  
24 are appliances hardware.

25 In the annual report (reading):

1 "Cost of license revenues includes hardware."

2 Mr. Apotheker assumed that hardware sales were 5 to  
3 7 percent of revenues, and he also assumed that the hardware  
4 sales were only appliances.

5 Mr. Apotheker, he balked at this a little bit, but finally  
6 after looking at his prior statements when I was asking him  
7 about the 5 to 7 percent estimate, he said (reading):

8 "A. Yes, it's possible.

9 "Q. And did you know that Hewlett Packard sold Autonomy  
10 hardware for resale?

11 "A. I did, yes, but not for resale."

12 He knew. And let's get the numbers. I mean, 5 to  
13 7 percent is 50 or 45 to \$65 million worth of hardware in this  
14 company that Mr. Apotheker knew about.

15 He talked to Mr. Lynch about it. Mr. Lynch said it was  
16 small, and it was relatively. This is the total -- the  
17 percentages of hardware to total revenues, and it comes out --  
18 these hardware sales which so much has been made of comes out  
19 to about 9.1 percent. Not a big part of Autonomy's business.

20 Mr. Apotheker never asked how much hardware was sold. He  
21 didn't care if it was 45 or 60, which he assumed, or if it was  
22 closer to 90. He just didn't ask.

23 And this appliance-versus-standalone hardware distinction  
24 is something that I think has been made up for purposes of this  
25 case. You don't see "standalone hardware" in the documents.

1       What an appliance was was hardware running Autonomy  
2 software. There were contracts in the data room that made it  
3 completely plain that hardware was being sold, I think in that  
4 case, to UBS and was delivered at a different time than the  
5 software that they were also buying. All of this hardware was  
6 designed to increase sales of Autonomy software and to be used  
7 in most cases with it.

8       "Appliance," I guess is what I'm saying, is a far broader  
9 term than this narrow term that Mr. Apotheker used, but the  
10 point Mr. Apotheker is he didn't care about hardware, period.

11       Now, you're going to buy a company, you're going to read  
12 the analyst reports. Let's see what's in the analyst reports,  
13 and they brought a lot of them in here to say what their  
14 reports meant but let's see what they said.

15       Mr. Geall reports in his analyst reports (reading):

16               "Gross margin" blah blah "due to additional costs  
17 associated with hardware sales."

18       Somebody interested in hardware, you'd think reading the  
19 analyst report would say, "What are the hardware sales and how  
20 much?"

21       Next.

22       Mr. Khan (reading):

23               "The company explained the reduction in gross margins  
24 by the unexpected shift to the cloud but it could be  
25 explained by the sale of additional hardware in the

1 quarter."

2 "Additional hardware in the quarter." So somebody reading  
3 that could ask the question.

4 Next.

5 Paul Morland, whom you heard from (reading):

6 "The performance looks even more disappointing given  
7 the combination of the larger banking deals and a boost  
8 from the sale of hardware."

9 So imagine you're HP getting ready to buy this company and  
10 you're trying to figure out what you want to ask questions  
11 about, you're reading the analyst reports, you read that.

12 Mr. Toms (reading):

13 "Surprising level of potential 'reselling revenue.'  
14 We remain unclear why Autonomy is potentially booking  
15 material 'reselling' revenue.

16 "Product seasonality (particularly adjusting for  
17 hardware-related revenue).

18 "Revenue is potentially flattered by hardware sales.  
19 Q3 '09, Q2 '10 we saw elevated hardware. Idol product  
20 benefits from hardware."

21 Mr. Toms said it right, he was asked (reading):

22 "Q. And if someone were interested in finding out more  
23 about Autonomy's revenue, your reports could give them a  
24 clue to ask more questions; right?"

25 And the answer is, "Right."

1 How in the world could Mr. Sarin and his colleagues read  
2 these reports and not ask about hardware sales if they were  
3 interested? The reason they didn't ask him about it is that  
4 they weren't interested. They just wanted to know about the  
5 software side of the business.

6 Now, this is the one that boggles my mind that was left  
7 out completely of the prosecutor's opening.

8 Mr. Gersh during due diligence said that Mr. Hussain said  
9 to him on one of these calls, "We sell hardware for the  
10 convenience of our customers." He said it to him and Mr. Gersh  
11 got that and didn't care.

12 Later on he wrote to his colleagues an e-mail that says  
13 (reading):

14 "So far as I can tell, they have not captured free  
15 software or hardware pass-through."

16 He knew that there was hardware being passed through and  
17 couldn't find it in the books or whatever, but he chose not to  
18 ask any more questions about it. He didn't care.

19 The auditors who were helping with due diligence knew that  
20 Autonomy sold hardware separately from software. I just  
21 mention that. They saw the contracts to that effect in the  
22 data room.

23 Agreement Number 2: This is a contract for hardware and  
24 software development. When do you recognize hardware revenue?  
25 This is being shipped separately.

1 This contract includes implementation -- Agreement 19 --  
2 of networking hardware and infrastructure.

3 Agreement 28, this is a purchase order for additional  
4 storage. Storage is hardware, the big cells that Digital Safe  
5 runs on.

6 They wanted Mr. Sarin to ask questions about -- to ask  
7 some of their questions about this, but he never did.

8 Gersh -- from Andy Gersh (reading):

9 "Attached your questions for Autonomy. Please feel  
10 free to defer them."

11 And then Sarin says (reading):

12 "Andy - These are very specific. We need to find the  
13 right way to accomplish our goals."

14 And Mr. Sarin narrowed the questions and never asked the  
15 questions that KPMG suggested to him about hardware. They just  
16 didn't care.

17 When the deal closed on October 3rd, Hewlett Packard got  
18 all the books and records of Autonomy and it got the Deloitte  
19 work papers and could review them, and those work papers and  
20 books and records clearly showed -- this is the stipulation  
21 that says that -- clearly showed the hardware sales. You  
22 couldn't miss it.

23 The claims that they are making now, ladies and gentlemen,  
24 and that the Government is making in this case that hardware  
25 sales by Autonomy were unknown or that it mattered to Hewlett



1 Packard is just plain false. Hewlett Packard brought it up a  
2 year later as a basis for its claim of fraud. During due  
3 diligence one of the ironies is that Hewlett Packard was  
4 selling hardware to Autonomy during due diligence for resale.  
5 This is Exhibit 5943. Take a look at it.

6 Big picture from our point of view is that hardware sales  
7 had absolutely nothing to do with the purchase of Autonomy.  
8 Mr. Apotheker knew that there were hardware sales. He didn't  
9 care. All he cared about was his vision. His vision is, among  
10 other places, in these exhibits. They're the exhibits you've  
11 seen where they talk about the reasons for buying Autonomy, the  
12 way it's going to help them disrupt and take over the business  
13 intelligence market, the way they're going to mix Autonomy  
14 software with Vertica and some of Hewlett Packard's software.  
15 They're going to completely disrupt the industry and they're  
16 going to transform Hewlett Packard into a different sort of  
17 company.

18 Now, Ms. Lesjak, who came in, she talked about -- she was  
19 at the meetings where this acquisition was discussed. She  
20 opposed Mr. Apotheker's purchase not because of any financial  
21 metric or "I saw this in the books," or anything else, she  
22 didn't even look at the financial statements, but because she  
23 thought that Hewlett Packard was paying too much, that they  
24 could get it for cheaper, they were paying too much of a  
25 premium.

1 The claim that the financial statements of Autonomy were  
2 important to Mr. Apotheker's decision to buy Autonomy is just  
3 nonsense. They bought it for the IDOL software based on a  
4 belief that they could make all these synergies happen and make  
5 a whole bunch of money.

6 Mr. Apotheker didn't care what he paid. He had a  
7 conversation with Dr. Lynch. We negotiate, this is over lunch  
8 in France, Deauville, four hours, and they finally settled on  
9 2550 -- or the lunch they settled on a range before there was  
10 any due diligence.

11 Ms. Lesjak, the CFO, the chief financial officer of  
12 Hewlett Packard who bought a company for \$11.7 billion, didn't  
13 really learn that the board had -- about the maximum price  
14 until she was on the stand. And Mr. Sarin said that, yeah, the  
15 price range before due diligence even happened had already been  
16 established.

17 Ms. Lesjak thought they could get it for less. Neither --  
18 she didn't read the analyst reports. She didn't read the  
19 financial statements. She didn't read the KPMG due diligence  
20 report. This is the CFO.

21 Mr. Apotheker didn't -- none of them asked a question  
22 about hardware sales. They just didn't care. They were  
23 persuaded that they were getting a \$17 billion value for a  
24 cheap \$11.7 billion.

25 I mentioned Mr. -- and I think you've seen from the

1 evidence if you look at those slides -- Mr. Apotheker was  
2 desperate to transform Hewlett Packard. He thought Hewlett  
3 Packard was in trouble. He thought it was sort of going down  
4 the tubes. He wanted to buy, remember, all three software  
5 companies according to Ms. Lesjak. He wanted to by TIBCO,  
6 Autonomy, and Software AG. She said they couldn't afford them.  
7 That sort of ruined their relationship.

8 She thought and she told you that she thought that  
9 Mr. Apotheker and Mr. Robison were too excited about Autonomy.  
10 They didn't negotiate the price properly. They didn't do the  
11 old Hewlett Packard tried-and-true merger tactic of dance and  
12 walk away were her words.

13 She thought the -- and, remember, they did this heading  
14 towards an August 18 announcement. She thought that the  
15 results of that announcement were going to be a disaster  
16 because of all the news that the investors were going to react  
17 to.

18 Mr. Apotheker thought that they had no choice but to go  
19 ahead and do it because Autonomy was simply crucial to Hewlett  
20 Packard.

21 Nothing that Hewlett Packard did in this period in this  
22 regard had anything to do with any exact quantum of hardware  
23 sales. They knew that some hardware was being sold. They  
24 didn't care.

25 I've said this mantra about standalone hardware sales is

1 meant to, I think, mislead you. The evidence is that the  
2 hardware sales weren't standalone. They were made primarily to  
3 software customers, big banks and other big software customers  
4 of Autonomy, and the purpose was relationship building and  
5 selling more software.

6 Mr. Sullivan talked about that, that it frequently happens  
7 in the industry.

8 Mr. Goodfellow talked about it, about the benefits of  
9 buying hardware and software from one source, the one-stop  
10 shopping.

11 Mr. Egan talked about it, hardware was sold with the  
12 intention that the customer would buy software, the more  
13 higher-margin software (reading):

14 "Q. It was never your concern that hardware sales were  
15 inconsistent with a pure software model?"

16 He said he wasn't concerned about that.

17 And these are just some of the quotes (reading):

18 "It happens in the software and hardware industries  
19 frequently," Sullivan.

20 "It's a relationship builder" is Egan.

21 "You sell hardware to drive revenue," Sullivan.

22 "Hardware sales were made in aid of selling more  
23 software," Egan.

24 "Absolutely a benefit to future software purchases," Egan.

25 And, remember, Autonomy and Deloitte tracked the

1 relationship between the sales. They kept track of it, the  
2 sales of low-margin or below-cost hardware to customers, and  
3 then they would track how are we doing with them as are we  
4 getting more money from software sales than we are losing and  
5 are we getting more software sales. It's a way to drive  
6 revenue.

7 To make this part of the case, this hardware piece of the  
8 case, the Government has relied a lot on some very confusing  
9 lists of customers.

10 Your Honor, this would be a good time. Could we just  
11 stretch for a second?

12 **THE COURT:** That's a great idea.

13 Ladies and gentlemen, stand up, stretch.

14 (Pause in proceedings.)

15 **MR. KEKER:** Okay. A lot of words in a short period of  
16 time.

17 I want to go on to this top 40 issue. They've talked a  
18 lot about these lists and there's been testimony about these  
19 lists being fairly confusing. The due diligence team certainly  
20 thought that the lists were confusing because they said they  
21 didn't make sense.

22 Mr. Gersh said -- first of all, Mr. Gersh couldn't keep  
23 the lists straight. He didn't know which one was the contract  
24 list and which one was the customer list, and he said he didn't  
25 use them in his due diligence report because they didn't make

1 sense. He thought that -- he just didn't make sense of them.

2 And Mr. Sarin also got them reversed, didn't know which  
3 was which.

4 These lists were created in about a day in August, mostly  
5 around August 3rd and August 4th, with a note of -- and they  
6 were heavily redacted so that all you got was an amount of  
7 money and an industry for the end user, which was discussed and  
8 talked about, and that was it. Yeah, with a note about who the  
9 end user would be if the sale had been to a reseller.

10 Let's go back to the earlier one.

11 Okay. During due diligence they agreed that the top 40  
12 list would focus on software licenses, not hardware sales. And  
13 here's some of the exhibits that show that.

14 A Sarin e-mail, he wrote to confirm that the lists include  
15 license and maintenance and service revenue, not hardware  
16 revenue. License and maintenance and service revenue. That's  
17 software contracts.

18 Mr. Levadoux (reading):

19 "The request was for revenue split by license,  
20 support, and services."

21 Mr. Hussain's spreadsheet, which you saw, 2102, when  
22 Agent Bryant was testifying, recognized revenue -- it says  
23 right at the top (reading):

24 "Recognized revenue from software, maintenance, and  
25 hosted 2010 and 2011 to date."

1 So what he thought that list was was software revenue.

2 And then his e-mail, 2104 (reading):

3 "The schedule provides recognized revenue by customer  
4 for software, hosted, and maintenance."

5 They weren't talking about hardware sales when they were  
6 talking about these lists. What HP was interested in is: Who  
7 were the software companies? We want to see sample terms. We  
8 want to know what industries they're in.

9 All of the transactions -- and there was an agreement not  
10 to identify the end -- excuse me -- not to identify resellers.  
11 If it was a sale to a reseller, what HP wanted to know was who  
12 the end user was going to be, what industry were they in, and  
13 that's Mr. Sarin (reading):

14 "If a software company like Autonomy sold a deal  
15 through a reseller, the piece of information you would be  
16 interested in in these lists is not the reseller but the  
17 end user; right?"

18 Mr. Sarin says, "Yes."

19 All of the deals that are listed in the software list that  
20 eventually went over listed the end user. All of them to the  
21 extent that they are resellers, were expected to close with the  
22 end user later on, and that's why the end user was listed and  
23 not the reseller.

24 Hewlett Packard never asked about hardware sales,  
25 including about appliance sales. Here's the -- you can go

1 through these (reading):

2 "Describe your sales model by product or vertical.

3 "Hosted versus SAS, on-premise license versus OEM  
4 versus appliance.

5 "Provide a historical revenue split by license,  
6 support, and services.

7 "Customer contracts split by major line of business:  
8 Licensing, OEM, Hosted, SAS."

9 They focus on what they call core revenues, which is  
10 product licenses, cloud, and OEM, and so on.

11 They never asked a specific question about how much  
12 appliances, how much hardware do you sell, and so on.

13 The lists were the product of very limited due diligence  
14 under the English takeover rules. Hewlett Packard was scared  
15 to death that Oracle was going to come sweeping in and mess  
16 this deal up, which they considered transformative.

17 Remember Mr. Apotheker thought that Autonomy was the key  
18 to saving Hewlett Packard. Those were his words.

19 Ms. Lesjak testified to him he wanted to take no chances  
20 that another bidder would come in and interfere with what he  
21 saw as the key to HP's future. So the information that was  
22 exchanged was heavily negotiated and very limited.

23 Mr. Sarin recognized that the process would be that they  
24 would ask questions. Autonomy would answer the questions.  
25 They wouldn't try to read their mind. The burden is on the



1 company that is buying -- that's HP -- to say, "Here's the  
2 information we want. Please give it to us." That's what Andy  
3 Johnson recognized. (reading)

4 "It's fairly standard for the buyer to sort of drive  
5 the process and define what information it wants?"

6 Mr. Gersh said, "Yes."

7 "You wouldn't expect anybody at Autonomy to try to  
8 read your mind?"

9 Mr. Sarin agreed with that.

10 "Responsibility of the target company to answer  
11 questions. They're not expected to volunteer  
12 information?"

13 Andy Johnson agreed with that.

14 "There's no general duty of the target," that's  
15 Autonomy, "to open its files and say, 'Come on in and look  
16 at whatever you want'?"

17 "That's correct."

18 And, in fact, they couldn't be more clear that they  
19 negotiated limits on disclosure. The Hewlett Packard proposed  
20 in this exhibit that they wanted all reasonable access to all  
21 information, and the Autonomy drafters took it out of the  
22 agreement so they were making plain that that was not the  
23 standard that they were following.

24 But there's another sort of larger question about this  
25 that I think you ought to consider. Why would Mr. Hussain

1 knowing that all the Autonomy books and records would be in the  
2 possession of his new employer when he was planning to work for  
3 Hewlett Packard and did for eight months, why would he lie to  
4 them before the acquisition knowing that they were going to  
5 find out whatever they were going to find out because they were  
6 going to have the books and records?

7 Mr. Reeves suggested yesterday that somehow he was going  
8 to clean up the books so nobody would ever know but that's  
9 absurd. These books that went over and the Deloitte work  
10 papers that went over clearly talked about these hardware  
11 sales. They talked about the one segment. They talked about  
12 the sales of the loss. They talked about all this that you've  
13 seen. The debts, the write-offs, anything that had happened  
14 would be clear in the books and it makes no sense that  
15 Mr. Hussain would think otherwise.

16 Hewlett Packard was not misled about anything that they  
17 cared about. They weren't misled about hardware. They weren't  
18 misled about sales to resellers. They weren't misled about  
19 sell-in versus sell-through.

20 As I said, Mr. Apotheker was determined to buy Autonomy.  
21 He was going to announce it on August 18 because he had a lot  
22 of other bad news to give the market, and he thought announcing  
23 the purchase of Autonomy would be good news. Unfortunately for  
24 him, this is -- right when he announced it, it didn't work out  
25 and he was fired. The visionary was gone. The vision was

1 never achieved.

2 This case, which then a year after they got rid of  
3 Mr. Apotheker, this case became a claim of fraud case by  
4 Hewlett Packard, and what it has turned into is a battle of  
5 accountants; and the Government has not provided you with any  
6 way to decide who is right in this battle.

7 So what you have to ask: What is the relationship between  
8 not knowing what the evidence shows and the very important  
9 principle of proof beyond a reasonable doubt? And I submit  
10 that if you're confused and uncertain about what this evidence  
11 shows, now or after your deliberations or after you try to plow  
12 through those exhibits, then you have a reasonable doubt; they  
13 have not proved Mr. Hussain guilty beyond a reasonable doubt.

14 You can't simply trust that the Government is right. For  
15 Mr. Hussain's sake, I certainly hope and beg you not to blindly  
16 put blind faith in what the prosecutors have to say. They want  
17 to win this case. To do it they are willing to put before you  
18 contradictory and sometimes ridiculous testimony, particularly  
19 from witnesses that they've immunized, and I just want to  
20 remind you about a few instances of it.

21 Dave Truitt saying that he didn't know about the  
22 \$2.3 million profiling sale that went to his own company, that  
23 he just didn't know about it, never heard of it, and so on,  
24 that was a lie.

25 Mr. Baiocco, Hewlett Packard's preferred partner,

1 testified that Capax did no eDiscovery work but the evidence  
2 shows that they did a lot.

3 Then there's Mr. Egan sending pretextual e-mails to London  
4 saying things that weren't true and then turning around and  
5 telling you that Sullivan and Scott both knew that Capax wasn't  
6 doing any eDiscovery work and was getting paid anyway. Both  
7 Sullivan and Scott say that's not true.

8 Why does Mr. Egan need to lie to people in London? Why  
9 does he need to send pretextual e-mails? There's no evidence  
10 that auditors look at those e-mails. He's sending lies about  
11 Capax needing -- Capax having lots of work to do and we need to  
12 give them more money and so on. He's telling Sullivan that,  
13 he's telling Chamberlain that, he's telling Kanter that, and  
14 he's telling Mr. Hussain that. Why does he need to lie to  
15 London if they know what he's up to?

16 And then there's that great moment, one of my favorite  
17 moments in the trial, which I don't know if you remember this,  
18 but Mr. Baiocco -- Mr. Baiocco meets Mr. Hussain for the first  
19 time in April of 2011. He gets up and tells you that  
20 Mr. Hussain comes up to him and says, "You were supposed to do  
21 another reseller deal" or "backdate reseller deal," or I can't  
22 even remember what he claimed.

23 It was pointed out to him that he's talked to the  
24 Government 10 times and never come up with that lie, and he  
25 insists it's not a lie and says that they made a deal that

1 Capax would somehow be paid back for the new agreement. He was  
2 going to make a reseller deal or a new amendment, or something,  
3 and Capax would be paid back and that Mr. Hussain had agreed to  
4 that.

5 And, again, you ask him questions: Who said what? How  
6 long was this meeting? Where was it? And eventually it turns  
7 out that what he's talking about is a 30-second exchange where  
8 he goes and sees Mr. Hussain after giving him a contract and  
9 says, "Are we good?" And Mr. Hussain says, "Yeah, we're good."

10 And that's -- so he tries to blow up this thing and when  
11 he gets pushed, even he admits that it's a big nothing.

12 So where does that leave you? It suggests that you can't  
13 trust the Government witnesses, you can't trust the prosecutors  
14 to screen the Government witnesses for truthful testimony. So  
15 what are you -- ask yourself: Do I understand the evidence  
16 that has been thrown at me for the last two months? If you  
17 don't, the Government has not proven its case beyond a  
18 reasonable doubt.

19 In his opening Mr. Leach said that the case was a puzzle  
20 and he said to you (reading):

21 "There are a number of pieces to this puzzle, so be  
22 patient, have an open mind, do the best you can. And when  
23 the Government stands up again," which is now, "after  
24 you've heard from all the witnesses, after you've seen all  
25 of the documents, after all of the pieces of the puzzle

1 have been played, I submit to you that a clear picture  
2 will emerge."

3 Well, let's look at the puzzle, and there it is  
4 (indicating). There's nothing clear about this puzzle.  
5 There's nothing complete about this puzzle. Without that clear  
6 picture that Mr. Leach promised, the Government is admitting  
7 that it cannot fit the puzzle together. Reasonable doubt as to  
8 Mr. Hussain's culpability and guilt exists.

9 Again, stepping back, a big picture, the prosecutors in  
10 this case are selling -- have been selling an absolute fantasy  
11 that the HP machine has created for them. Think about what  
12 they're saying. They're saying that hardware revenue is proper  
13 revenue, it was properly accounted for in a one-segment  
14 company, but it's important because low-margin hardware sales  
15 drag down gross margins.

16 Well, that's exactly what the financial statements of  
17 Autonomy show. Every penny of these hardware sales is  
18 accounted for properly. All the numbers are right. To the  
19 extent that they are not making money on hardware sales, the  
20 gross margins are depleted. No one is claiming that the  
21 numbers aren't right. They're claiming that somehow HP didn't  
22 understand them properly.

23 The cash shown is all there. Nobody's saying one penny of  
24 cash is missing. What they're saying is these revenue numbers  
25 should be taken out the way Mr. Yelland has taken them out.

1 They want to change the numbers by taking out sales that  
2 Deloitte had accounted for as proper and were leading into the  
3 revenue numbers.

4 This is a slide I showed you in the opening. This is a  
5 slide of a company whose revenues were growing every year, who  
6 was confidently buying companies for a lot of money, including  
7 right up until 2011 when they bought Iron Mountain's digital  
8 part for \$380 million, but in 2009 they'd spent 775 million on  
9 Interwoven. They're depicting this company as some desperate  
10 company who needs to be acquired. It's false. That's not who  
11 they were and it's not where they were in 2011.

12 Andy Johnson said that as late as August 16, Dr. Lynch --  
13 this is two days before the announcement -- Dr. Lynch was  
14 willing to walk away if HP tried to lower the price.

15 Can we see 151, Jeff, down here at the bottom.

16 "As late as August 16, 2011, is it your recollection that  
17 as of that time, you felt that Dr. Lynch was willing to walk  
18 away if HP tried to renegotiate the price?"

19 Autonomy didn't need HP; HP needed it and was willing to  
20 pay almost anything to reach Apotheker's vision.

21 So the Government gets the last word, as they should  
22 because they have the burden of proof beyond a reasonable  
23 doubt, but there are dangers in them having the last word.  
24 They can say things that I can't rebut, I can't challenge, I  
25 can't say what's wrong with them. They can characterize

1 evidence unfairly. So that's why it's important for you to  
2 listen with a skeptical mind, professional skepticism, as  
3 Deloitte would say.

4 I hope you have enough information now so that when the  
5 prosecutor is exaggerating or has his facts wrong that you'll  
6 be able to tell.

7 I expect them to talk about common sense, because they  
8 always do. Mr. Reeves has already talked about common sense.  
9 That's what they always do when they're trying to jump from  
10 here to there, when they are trying to bridge a hole in the  
11 evidence, when they're trying to figure out -- they want to get  
12 you from here to there without really explaining how you can  
13 get there.

14 Does common sense tell you whether or not Deloitte, who  
15 studied these accounts so hard and approved them, or  
16 Mr. Yelland, who was working for the HP machine -- does common  
17 sense tell you which one of those are right? I don't think so.  
18 But you -- obviously you will decide.

19 I expect them to say that Mr. Hussain lied to the  
20 auditors. They said that a number of times. But they never  
21 proved it. Who -- when did he lie to the auditors and about  
22 what did he lie to the auditors? If he made mistakes, fine,  
23 but when did he lie to the auditors? There is no evidence of  
24 that.

25 The fact that they bring in Ms. Anderson and Mr. Welham,



1 who are both juniors, and they say, "well, I didn't know  
2 something," that doesn't prove anything.

3 Look at the work papers and you'll see the scope and  
4 extent of the information that Deloitte had when they were  
5 making these judgments that the accounting is proper and  
6 telling Mr. Hussain that his judgments about the accounting  
7 were satisfactory and met accounting standards.

8 And of course Deloitte -- and this is the other trick that  
9 they've been playing with the case. Deloitte doesn't know what  
10 Mr. Hussain doesn't know. So Egan has made some dirty deal or  
11 side deal with Baiocco or if Egan has backdated something in  
12 the United States and Mr. Hussain doesn't know about it, yes,  
13 Deloitte doesn't know about it because he doesn't have it to  
14 tell them. But for all of the main transactions, look at the  
15 extensive work that is described in the Deloitte work papers.

16 And then another thing I hope the prosecutors will answer  
17 in this case is when Hewlett-Packard bought Autonomy -- and  
18 we've already said got access to all the books and records and  
19 to Deloitte's work papers -- Mr. Hussain went to work for HP  
20 and was there for eight months. Deloitte continued as the  
21 auditors once it became part of Hewlett-Packard. The hardware  
22 sales continued, by the way, when -- once it became  
23 Hewlett-Packard. Mr. Yelland became the chief financial  
24 officer of Autonomy within Hewlett-Packard, and certainly  
25 during that period, Mr. Hussain and Deloitte weren't acting

1 like they had something to hide or were concerned about.

2 Mr. Sullivan testified nobody --

3 **MR. FRENTZEN:** I actually object to that, Your Honor.  
4 There is no evidence of that, period. It's speculation.

5 **THE COURT:** Go ahead, Mr. Kekker.

6 **MR. FRENTZEN:** It's not true.

7 **MR. KEKER:** I predict that when I sit down, the  
8 rebuttal is going to be an ugly attack on Mr. Hussain, and I  
9 want you, when you're listening to it, to think about where  
10 it's coming from, I guess. That's all I have to say about  
11 that.

12 Mr. Sullivan testified that no one suggested to him that  
13 hardware sales should be hidden from Hewlett-Packard.  
14 Mr. Sullivan went to work for Hewlett-Packard, too.

15 The rebasing exercise in June, 2012, found no fraud and  
16 minimal adjustments to the books, and yet a year later, it took  
17 a year for HP to claim fraud. Isn't that proof that the claim  
18 of fraud was made up in hindsight?

19 **MR. FRENTZEN:** I object, Your Honor. This is exactly  
20 what we argued about before closing --

21 **THE COURT:** Ladies and gentlemen, you listen to the  
22 evidence. You'll form your own judgments. You are entitled to  
23 consider any reasonable inference based upon the evidence.

24 Okay. Let's continue.

25 **MR. KEKER:** This is a case without a soul. It's

1 bureaucracy in search of a crime. They flyspecked three years  
2 of accounting judgments, ignored three years of careful work by  
3 Deloitte, embraced the restatement created by Yelland and the  
4 HP machine, all to crush Sushovan Hussain and give everyone  
5 else you've heard about in this case, everyone, a free pass.

6 Why is he here alone? We know why he's here. Because the  
7 HP machine wants him convicted. With countless lawyers and  
8 consultants working on the civil case for money damages in  
9 England, HP wants a criminal conviction that they can point to  
10 in that civil case.

11 This case is a dispute about accounting. That accounting  
12 dispute is being litigated in English courts for money damages,  
13 and that's where it belongs.

14 I ask you to -- first I thank you for your attention, and  
15 I ask you to not become part of the HP machine and to return a  
16 verdict of not guilty.

17 Thank you very much.

18 **THE COURT:** Okay, ladies and gentlemen. We are going  
19 to take a recess now. We will be in recess until 10 to --  
20 well, let's see. Five to 11:00.

21 Remember the admonition given to you: Don't discuss the  
22 case, allow anyone to discuss it with you, form or express  
23 opinion.

24 (Recess taken at 10:42 a.m.)

25 (Proceedings resumed at 10:52 a.m.)

1           **THE CLERK:** Come to order. Court is now in session.

2           (Proceedings were heard in the presence of the jury:)

3           **THE COURT:** Please be seated. Let the record reflect  
4 that all parties are present, the jury is present.

5           You may proceed.

6           **MR. FRENTZEN:** Thank you, Your Honor.

7                           **REBUTTAL ARGUMENT**

8           **MR. FRENTZEN:** Good morning, ladies and gentlemen.  
9 Don't let Mr. Hussain, Mr. Keker, turn this case upside down.  
10 What do I mean by turning the case upside down? Well, what you  
11 just heard for two days now is a long story, a story in which  
12 Mr. Hussain is the villain -- I'm sorry -- is the victim, and  
13 Hewlett-Packard, some machine, some amorphous machine that's  
14 Hewlett-Packard has taken over this case and Mr. Hussain is the  
15 victim. That's simply not consistent with the evidence.

16           It's an interesting theory. We can talk about that a  
17 little bit, but it's completely inconsistent with the evidence  
18 and, dare I say it at the get-go, it is consistent with common  
19 sense.

20           This case is not -- it just doesn't work like that, and  
21 there is a couple of things that have been mentioned already  
22 that I want to talk about very briefly in terms of what this  
23 case is not about.

24           One of those you heard from Mr. Keker twice now, that  
25 everyone you've heard of mentioned in this case -- that

1 everyone got a pass. Number one, that's irrelevant. We're  
2 here about Mr. Hussain. We're not here about other folks,  
3 except to the extent they may have testified or they are  
4 alleged to be have been involved with Mr. Hussain. But it's  
5 also not true. So let's put that aside. It's irrelevant and  
6 untrue that everybody else got a pass.

7 The other thing Mr. Keker has spent a lot of time talking  
8 about is this supposed Hewlett-Packard machine. He's pointed  
9 out some lawyers that have been here, in the audience here and  
10 there. He has somehow determined that there is a grand  
11 conspiracy. In turning it upside down, I want you to just  
12 think for a minute about the conspiracy that this requires,  
13 rather than the conspiracy alleged, which is that Mr. Hussain  
14 and other folks at Autonomy in and around early 2009 decided to  
15 start inflating their books, and in that way, defrauding the  
16 public, the auditors, which we'll get to in a minute, and  
17 eventually Hewlett-Packard, to pump up their numbers, that  
18 that's not the conspiracy that the evidence showed.

19 Instead Mr. Keker is arguing that somehow a  
20 Hewlett-Packard machine has created a gigantic conspiracy that  
21 has encompassed not only every witness that testified in this  
22 case, but apparently the auditors and, in fact, the federal  
23 government. I don't know what this conspiracy is called. The  
24 "Printer Mafia"? It doesn't make sense.

25 The folks over here at this table, ladies and gentlemen,

1 there is only one name on the front of the jersey for this  
2 table and it's not HP. It's US DOJ, the Department of Justice.  
3 We serve one client, that is the government. We do not serve  
4 Hewlett-Packard.

5 And even more important, what you should know is what's  
6 being turned upside down is that there is actually a statutory  
7 provision for HP's role, if you will, although they don't  
8 really have a role in this case. This is between the  
9 Government and Mr. Hussain. But there is something called a  
10 Crime Victims' Rights Act, and the Crime Victims' Rights Act  
11 provides for certain things.

12 It provides for victims of crime or purported victims of  
13 crime to be able to consult about important things with the  
14 Government. It provides for victims of crime to come and  
15 appear in court. It does not mean they are driving the train.  
16 They are not. It does not mean there is some grand conspiracy.  
17 In other words, this is not the upside-down conspiracy. The  
18 evidence will show -- the evidence did show that Mr. Hussain  
19 was involved himself in the conspiracy. So let's not get  
20 everything turned upside down.

21 I want to talk just for a minute about one of the main  
22 things that Mr. Keker has tried to turn upside down. Yesterday  
23 you heard about dueling accountants. Today you heard about  
24 battle of accountants. You also heard some quip about Johnny  
25 Cochran, which I may get wrong, but if the accountants

1 disagree, you must let his guy go free or something like that.  
2 Funny.

3 That's not the evidence you have, ladies and gentlemen. I  
4 want you to think about the evidence that you have in this  
5 courtroom and the folks that took the stand and took an oath  
6 and testified. The accountants. There were a lot of them.

7 What do you get from those accountants? I'm talking about  
8 the ones that actually came in here. They're in agreement,  
9 ladies and gentlemen. I'm going to go through that. But every  
10 accountant who came in here and testified agreed.

11 They agreed that the accounting by Mr. Hussain at Autonomy  
12 was fraudulent, was wrong, was inaccurate. Did any accountant  
13 come in here -- and we have the burden of proof at all times,  
14 ladies and gentlemen. Make no mistake. And we embrace that.  
15 But in an accounting case, framed up to you as battle of the  
16 accountants, dueling accountants, no. We'll go through this.

17 What do you have? You have the accountants saying this  
18 was bogus. All of them. There is no duel. You've got to have  
19 two to have a duel, last time I checked. Maybe more. Battles.  
20 I don't know how many. But they all agree.

21 Mr. Yelland. Mr. Yelland came in and obviously that was  
22 the restatement. The restatement which Mr. Keker claims is,  
23 you know, somehow bogus, it's part of this HP conspiracy  
24 machine. The restatement was required by law, and Mr. Yelland  
25 told you that. It was something that had to be done. They

1 spent years on it. A year plus. They spent a lot of time.  
2 They went through every scrap of paper. They redid the  
3 accounting.

4 And I'm going to get into in a minute some of the things  
5 that Mr. Keker has talked to you about that were not accurate,  
6 but, listen, let me just say this. I have limited time. I  
7 have the benefit of you already having heard my friend and  
8 colleague, Mr. Reeves, go through everything with you, and it  
9 was a long time. Mr. Reeves covered everything. Probably the  
10 most important thing I will do here today is to refer you back  
11 to him going through everything.

12 I know Mr. Keker was -- said that -- you know, he was  
13 flashing things at you, and I want you to think back. Was he  
14 flashing things or was he moving through solidly? And did he  
15 show you weird bubbles on the screen that he had made like  
16 Mr. Keker did or did he actually show you the exhibits that  
17 were in evidence and things that you could review?

18 One of the things that Mr. Keker said about Mr. Yelland  
19 and the restatement was he made the claim that Mr Yelland just  
20 went through, and if there was a reseller and a reseller deal,  
21 that he tossed it. Not true. And Mr. Yelland actually  
22 testified about this.

23 If you would just take a quick look. You can see Discover  
24 Tech and Capax Discovery, and because these are not in parens,  
25 what that means is Mr. Yelland actually added these in. He



1 simply added them in in the correct quarter. In other words,  
2 if they went to a reseller which was bogus -- and we'll talk  
3 about that -- because the reseller wasn't reselling to anyone.  
4 I don't know how it gets more fake than that. Oh, you're a  
5 reseller but you're just not going to do anything. Then he  
6 didn't credit it for that quarter.

7 But Mr. Keker told you that he just tossed all of the  
8 reseller deals. Not true. Here they are. He adds them back  
9 in if the deal went through.

10 Now, if the deal never goes through, he doesn't add it  
11 back in because it's not really revenue, which is actually the  
12 way exactly that Mr. Hussain accounted for it. He would just  
13 come up with something fraudulent to reimburse them. We'll  
14 talk about that. We've already talked about that a lot.

15 But Mr. Yelland's restatement and Mr. Keker didn't lead  
16 you down the right path on that one.

17 So Mr. Yelland said all of the accounting -- not all of  
18 the accounting -- that Autonomy's accounting was fraudulent.

19 Mr. Welham, Lee Welham, came from -- here from the UK,  
20 worked for Deloitte, and this is what Mr. Keker supposedly  
21 relies on, is Deloitte. And we can go through this in a little  
22 bit, but what did Mr. Welham tell you? What Mr. Welham told  
23 you was, "Had we known X, Y, Z -- first of all, we would have  
24 wanted to know that. We would have taken that into  
25 consideration in our accounting. And on a lot of these deals,

1 they should not have been recognized."

2 Mr. Welham, I think, boiled IFRS and all of the other  
3 standards down to one of the best little quotes just in terms  
4 of what it means in terms of collectibility and in terms of  
5 continued managerial involvement. What does it mean? Why are  
6 these reseller deals a problem?

7 And if you go to a reseller and you sell it and you're  
8 really done with it, then we all agree that's not a problem,  
9 under any standard. But if you go to a reseller and you say,  
10 "Here you go, can you hold this for me, you don't have to do  
11 anything with it, and by the way, I'm still going to go resell  
12 it, in fact, we don't even want you to try to resell it, we're  
13 going to resell it," that's continued managerial involvement  
14 and you don't know about collectibility because you're not  
15 really collecting from the reseller to begin with.

16 What Mr. Welham said was cut and dry, it was short, and he  
17 said, "Well, if you still have to sell it, then you haven't  
18 made a sale, have you?" And that's a pretty simple way of  
19 saying if you -- if you still have to sell it, you still have  
20 managerial involvement. There's still risks and rewards at  
21 issue. There is collectibility at issue because this guy  
22 said -- the reseller has said, "I'm going to resell" -- take a  
23 look at the contracts. There's an end user. "I'm going to  
24 resell to this end user." But Autonomy has said, "Don't do  
25 that. We are going to take care of that."

1           How is that reseller really at risk? Because what is he  
2 going to do with it? Autonomy is trying to sell to the actual  
3 end user. They've asked him not to sell to the end user, the  
4 VAR; right? It makes no sense.

5           So Lee Welham, had he known that -- and you all know that  
6 is the circumstances. I mean, every value-added reseller who  
7 came in here told you two things, and we can go through it from  
8 the transcripts, but if you just think about it and recall,  
9 what Mr. Keker was focused on was well, you're still at risk on  
10 the contract, right? John Baiocco said "in the eyes of the  
11 law," meaning the contract says you're at risk.

12           But the truth of the matter -- the truth of the matter  
13 that Mr. Hussain had to be able to observe, even from London --  
14 and we'll go through this -- was that the people were not  
15 really at risk. It's an impossible situation. Don't sell.  
16 We're still going to sell. They have to take care of the  
17 reseller. There's no other option. Otherwise, nobody would do  
18 it.

19           And every reseller who came in here said eventually,  
20 "Yeah, I mean, I took it, I was sort of at risk, but I wasn't  
21 trying to sell it to anyone, and they told me they'd take care  
22 of it," and eventually they did, whether it was by writing it  
23 off, whether it was just saying "forget about it and here's a  
24 marketing assistance fee for doing nothing other than holding  
25 it." Whether it was some other ATIC or FISMA, eventually they

1 take care of them.

2 Mr. Welham clearly said if that is the situation, then the  
3 accounting is all wrong. And you've heard that's how it  
4 worked. And so Mr. Welham -- and he went through a series of  
5 things. "If you knew this ..." "Had you known that ..." And  
6 he said, "Yeah, that all would have been wrong."

7 Antonia Anderson, a very important witness because  
8 Mr. Keker wants to claim that Deloitte is the accountant that  
9 he's relying on somehow, even though nobody came in here and  
10 took the stand and agreed with anything he's arguing about the  
11 accounting. I mean, the basics, the core, that the accounting  
12 was okay at Autonomy. Nobody said that.

13 But Ms. Anderson worked at Deloitte. Then she worked at  
14 Autonomy. Then she worked at HP because she stayed on through  
15 the transition. And she worked very closely hand-in-hand with  
16 Mr. Yelland, Chris Yelland.

17 And what Ms. Anderson told you, among many other things --  
18 many situations in which she said that she would not have  
19 agreed with the accounting.

20 But after working at Deloitte and after working on the  
21 restatement: "As part of the ASL restatements, did you restate  
22 the FileTek transactions, the MicroTech transactions, the  
23 MicroLink transactions and the Capax transactions that we've  
24 been discussing today?"

25 Answer: "Yes."

1 Question: "Did you conclude that they were incorrectly  
2 accounted for under IFRS?"

3 Witness: "Yes."

4 So that's not the dueling accountant. Ms. Anderson is on  
5 board with Mr. Yelland. She agrees. When she was at Deloitte,  
6 she was deceived. When she got an opportunity to go back  
7 through everything and do the accounting properly, she agreed.  
8 So she's not dueling with Mr. Yelland.

9 Matt Stephan. Matt Stephan was an accountant. He worked  
10 in the finance department at Autonomy. Remember? From  
11 Australia, on his vacation, comes here to testify, has nothing  
12 to gain or lose. He works for a concrete company in Australia  
13 now. And just came, testified about what he saw when he was  
14 working at finance in Autonomy for Mr. Hussain, and he told  
15 you, "unquestionably, I took one look at these deals and I  
16 thought they were garbage." He said some stuff that was worse  
17 about them.

18 He said he raised it with Mr. Chamberlain. He said  
19 Mr. Hussain, through Mr. Chamberlain, you know -- "Don't worry  
20 about it. It's a small percentage of our sales. We've just  
21 got to keep doing it."

22 But he's not -- he's a trained accountant. He's not the  
23 dueling accountant.

24 Andy Gersh. Andy Gersh testified and said he would have  
25 had a very different view of Autonomy had he really known what

1 was going on at Autonomy. So he's not the accountant who's  
2 dueling for Mr. Keker.

3 Even Alan Rizek -- even Alan Rizek, who is an accountant,  
4 came in here and this is the guy that wasn't even putting  
5 MicroLink and Autonomy deals on the books. I don't know what  
6 kind of accountant he was, but he said he felt uncomfortable  
7 about things. He felt things were wrong. He thought these  
8 deals -- that he was on the back end of some fraudulent  
9 accounting.

10 So there is no duel here, ladies and gentlemen. There is  
11 no battle. That's a ruse. No accountant came in here, with  
12 all the lawyers and folks over here -- no accountant came in  
13 here, took an oath, and said Sushovan Hussain and the way he  
14 ran the accounting at Autonomy was just fine.

15 Just think about that for one minute. In an accounting  
16 case after everything Mr. Keker has argued, you have to  
17 consider the evidence and the witnesses who actually came in  
18 here and testified. And nobody will vouch for Sushovan  
19 Hussain's fraudulent accounting. Nobody.

20 **MR. KEKER:** Excuse me, Mr. Frentzen.

21 Your Honor, I object. Burden shifting.

22 **MR. FRENTZEN:** I said the burden is on us.

23 Nobody has taken that stand and said --

24 **MR. KEKER:** I say burden shifting when he talks about  
25 us bringing in witnesses and it's his burden. That's burden

1 shifting.

2           **THE COURT:** Well, ladies and gentlemen, let me just  
3 point out that the Government needs to prove each and every  
4 element of the offense. The Defense need to prove -- needs not  
5 to prove anything. They have no burden of proving anything.

6           **MR. FRENTZEN:** Every witness called here to testify  
7 before you who was an accountant disagreed with the way  
8 Mr. Hussain did the accounting.

9           As I said before, there's way too much here to respond to.  
10 You don't want to listen to it. I have limited time. Again,  
11 please rely on what you heard yesterday from Mr. Reeves.

12           Just a couple other quick things on what Mr. Keker talked  
13 about during his review of the evidence. You know, he talked  
14 about the EDD No. III deal with Mr. Baiocco and where  
15 Mr. Baiocco said he went and he met with Mr. Hussain in London  
16 and -- or Cambridge, can't recall right now, and he was in the  
17 UK, in any event, and Mr. Hussain hit him up for another 1.6,  
18 \$1.7 million EDD deal after the quarter in early April.

19           And Mr. Keker showed you a slide that said it was a  
20 30-second meeting in which, you know, Mr. Baiocco said, "Am I  
21 taken care of?" And Mr. Hussain said, "Okay."

22           Well, that's just not right, ladies and gentlemen.  
23 Mr. Baiocco testified -- if you recall, there was a whole piece  
24 about this where he met with Mr. Hussain and Mr.-- he was  
25 there, he was very interested in trying to finally get some of

1 this EDD work. He'd been getting paid millions already for not  
2 doing it, but he wanted to actually get in and do some of the  
3 BP work. And he approached Mr. Hussain about that, and if you  
4 recall, Mr. Hussain -- that's when he said, "I need you to do  
5 another deal." He says, "I got investors, I can't" -- you  
6 know, "I can't push another one through. We're already in the  
7 hole to you guys a lot." And then eventually he goes and he  
8 gets the -- he shows up at his -- at his hotel and, you know,  
9 there's a deal there waiting for him and it's backdated and  
10 then there's the email traffic with Mr. Hussain. So it wasn't  
11 a 30-second conversation. It wasn't just an "okay." That was  
12 not accurate.

13 You've heard a lot of talk about them actually doing  
14 eDiscovery work. That's not the evidence, ladies and  
15 gentlemen. That's conflating the EAS services, which Capax had  
16 done -- Mr. Baiocco testified about that -- done it for a long  
17 time. With the actual eDiscovery work, which he testified  
18 repeatedly they were incapable of doing and did not do until  
19 after Autonomy was acquired by Hewlett-Packard, that was simply  
20 wrong.

21 Mr. Keker tried to tell you that the Capax -- that  
22 Mr. Hussain did not sign off on the -- or approve the Capax  
23 expenditures, and that, ladies and gentlemen, is just not the  
24 state of the evidence. If I could just show you briefly --  
25 now, what Mr. Hussain did here on the Capax EDD authorizations,



1 approving the expenses was sort of interesting.

2       There was a flurry of emails in about mid 2009, if you are  
3 looking back over the evidence, where he kind of gets nervous.  
4 He starts asking questions that he supposedly already knows the  
5 answer to in emails and asking other people to approve for him.  
6 But if you take a look, it starts with Mr. Hussain and then  
7 eventually after this flurry of emails trying to get other  
8 people to approve it, you'll see he just starts approving it.

9       And so how do we know that? Well, the Capax goes like  
10 this. This is Exhibit 50, and you have seen it before, but  
11 this is page 2. And this is April 16 of 2009. So this is just  
12 a couple of weeks after the initial Capax EDD deal.

13       And Mr. Hussain is saying -- people are saying, "What do  
14 we do for these purchase orders?" And Mr. Hussain says, "I  
15 have no idea why this is so complex. Create a PO for  
16 outsourcing EDD processing, as we did last year. Send details  
17 of PO, gigabytes, price," or whatever, "to Stouff, Pete,  
18 Sullivan and me. We'll approve." In other words, "Just put a  
19 PO together. We'll approve."

20       This is the head of finance, this is the chief financial  
21 officer, this is the guy who has to approve all expenses over  
22 \$20,000 and he's saying "we'll approve." This is his  
23 instructions.

24       And then they get the -- sort of the draft from  
25 Mr. Smolek. You've seen this. And how fake are these as it

1 turns out, ladies and gentlemen? But Capax Global LLC,  
2 outsourced specialized EDD services, 1250 gigabytes" at such  
3 and such, a total cost 250,000. There is not even a -- who  
4 knows how much data is actually going to be processed. It  
5 doesn't even make sense. But they're just listing some data so  
6 they can get to a final number, and eventually Mr. Hussain  
7 says, "Thanks, Phil, for turning round quickly. I approve."  
8 So the Capax EDD approvals start with Mr. Hussain.

9 People start to raise questions, obvious questions if you  
10 are the head of finance for a company and you're approving  
11 hundreds of thousands and eventually, as we will see, millions  
12 of dollars.

13 And here, Chamberlain is probably not in on the deal yet  
14 because he's saying, "We need to note on the invoice who the  
15 end customer was and confirm we have billed them and paid  
16 before we make payments." In other words, how do you pay on  
17 supposedly subcontracting out EDD customer work and nobody  
18 knows who the customer is? It's not on these invoices. It's  
19 an obvious question and it's one that never gets answered.

20 And eventually Mr. Hussain is -- is just approving and --  
21 I'm sorry, but this is Exhibit 212. "Need paperwork for Capax.  
22 Suggest 750K or so. They have to pay the outstanding amounts."  
23 And this document also shows he knows why they're paying them.  
24 They're paying them because they need to funnel the money back  
25 in and "need paperwork this weekend." You can see -- and this

1 is in September of '09. He's starting to break down.

2 By December, it's just "Please find below another Capax  
3 EDD services," and, "Hi, Andy and Sushovan," and Hussain is  
4 saying, "Okay." In other words, he's approving it. So  
5 mr. Keker tried to tell you he wasn't, but he was.

6 By 2010, there is a question again about we -- I'm sorry.  
7 "Capax owes us money," and Mr. Hussain is saying, "Do we not  
8 owe Capax some monies?" He knows what's going on. He knows it  
9 was a circle and he was approving.

10 The invoices get sort of increasingly ridiculous. I'll  
11 just show you some. This is the one that is actually signed by  
12 Mr. Hussain. You can see his initials down there. And this is  
13 one that says anything above 500 pounds needs to be authorized  
14 by him.

15 And this is the one that says for European projects and  
16 this is long before he tells Mr. Baiocco he's got to sign up  
17 for another 1.5 million to do work in Europe, but he's already  
18 approving payment for work in Europe. And that, of course, if  
19 you recall -- that's to make up the difference on that  
20 Eli Lilly deal that went to him as a reseller. When it  
21 actually sold through directly to Autonomy, they were about  
22 \$700,000 short, and so they just come up with this additional  
23 EDD processing in order to make up the difference.

24 Exhibit 2559 -- I'm sorry. Let me get to this one. Yeah.  
25 2559-45, take a look at this. Now, you can see Mr. Hussain is

1 up here in the top corner, AK and SH. And by this point, we're  
2 hitting \$1.425 million for EDD processing that's not happening.  
3 Additional 475,000 requested by Hussain. Another  
4 1.425 million, Hussain. Yet another that totals to  
5 1.425 million.

6 And, of course, as you get to the tail end of this thing,  
7 you've seen the document where they paid 15 million -- about 15  
8 million in total to this phony EDD processing, and it goes back  
9 to this notion that you have to balance these things out, and  
10 somehow for Mr. Hussain, you've heard all this argument about  
11 how the expenses made sense. ATIC made sense, FISMA made  
12 sense, NearPoint made sense, ControlPoint made sense, discover  
13 Engine -- DiscoverPoint made sense.

14 None of it went sense. We went through each of those and  
15 the problems with each of them. But yet somehow it always  
16 makes sense. And you're going to pay exactly what you owe to  
17 the resellers for the deals that can't sell through. And here  
18 they pay 15 million in EDD processing that Baiocco can't do and  
19 he said that they couldn't do and they never did. They've got  
20 no contracts for it. They don't list anything on the invoices.  
21 It makes no sense at all.

22 But you add up what the EDD licensing deals were that got  
23 shoved through with Mr. Baiocco, and it's 7.5 million,  
24 4 million, at one point 8 million, which comes to 13-plus  
25 million. Add in the 10 percent, which Baiocco always wanted

1 his 10 percent, and you've got right at 15 million.

2 So that's how this scheme worked and everything kind of  
3 gets balanced out. But in any event, that wasn't accurate.

4 Mr. Keker told you that the Abbott Labs -- remember this  
5 Abbott Labs? They know it's not going to happen. They're  
6 trying to tell Abbott Labs "you need to front load your  
7 expenses, do a \$9 million deal with us, and then you'll save as  
8 you chart out," and Abbott is traditional and they say "no, we  
9 only want to pay as you go."

10 And yesterday Mr. Keker told you that Jane Snider said  
11 that a deal did go through where they paid up front, and what  
12 she actually testified to was other than this -- which was a  
13 \$600,000 deal at that point. They were trying to push through  
14 a \$9 million deal. They end up pushing it to the VAR. But the  
15 deal that actually pushed through, Ms. Snider testified:

16 "Other than the \$600,000 licensing deal, did Abbott  
17 basically continue to be on an à la carte, pay-as-you-go-type  
18 relationship with Autonomy?"

19 "Entirely, yes."

20 So, again, please, if you -- if you're referring back  
21 and -- listen, the beauty of this is that your memory controls  
22 here. But if you have questions about which side has given you  
23 the straight scoop, I suggest to you that these are just a few  
24 examples of where Mr. Keker strayed from what we actually  
25 heard.

1 Mr. Hussain was not asleep at the wheel. You've seen --  
2 we've seen the care and the detail he went through in paying  
3 attention to the sales, the expenses and so on. And he's not  
4 the unluckiest man on earth. In other words, this is not just  
5 some series of freak occurrences where he's being deceived by  
6 his sales staff. That wasn't happening at all.

7 He was paying attention. He knew what was going on. And  
8 then he just happened to fall into deals that would make people  
9 whole on these deals that were bogus. This was a  
10 well-orchestrated, set-up plan. Lightning can strike a guy one  
11 time. Maybe if it's one deal in one quarter or two deals in a  
12 quarter, but here -- you think about it. You've got 6  
13 successive -- I'm sorry, 10 successive -- two and a half years  
14 of deals -- of a huge number of deals. You've had to sit and  
15 listen through all of them. And somehow they just keep coming  
16 up as phony, fake, and then being made up, being made whole on  
17 the end. This is like a guy getting struck by lightning  
18 repeatedly over the course of two and a half years. It does  
19 not just happen. This is not just happenstance.

20 This was a scheme. This was a plan. This was  
21 orchestrated to pump up their numbers, make the quarter, every  
22 quarter, no matter what, and then eventually as you saw it was  
23 unsustainable. You've got to do something with it.

24 Mr. Hussain knew that the deals were bogus, each and every  
25 one of them. How do we know that? Well, we know that from --

1 Marc Geall told us about SMS calls. And this is his testimony.  
2 And that Mr. Hussain paid attention and ran SMS calls.

3 Mr. Geall also testified that within Autonomy, Mr. Hussain  
4 was a *de facto* head of sales. So he's in charge of the sales  
5 and he's paying attention to them through the SMS calls.

6 Mr. Stephan from Australia, he also testified that  
7 Mr. Hussain was leading the sales function. So he's in charge  
8 of all these sales and he's paying attention.

9 Mr. Stephan said something and this jibes with what  
10 Mr. Welham said, and that was that the VAR sales were clearly  
11 not passing the risks and rewards. They were not passing the  
12 managerial control, and that was very obvious. Why?

13 Mr. Stephan said, "First of all, these are small companies. I  
14 could tell they wouldn't be able to pay their bills." And then  
15 what he also said was the sellers had to keep selling. He was  
16 a bit player in finance, but he would sit in, remember, on some  
17 of the SMS calls. He was interested. And so he would hear,  
18 well, this has gone to a reseller.

19 So how do you know that this is a fraudulent transaction?  
20 Because Autonomy is still having to sell it. If you're the  
21 head of sales and you're tracking all these sales and you sell  
22 it to the VAR and the VAR is really on the hook for it -- I'm  
23 not talking about the contract and what the contract says, but  
24 the VAR is really on the hook for it, what are you going to  
25 tell your salespeople? You're going to say why are you still

1 trying to sell it to Eli Lilly or Kraft or the Department of  
2 whatever? Go spend your time on something else. That's the  
3 VAR's problem now. The VAR signed up for it, the VAR is good  
4 for it.

5 Mr. Hussain never did that. There's not one wit or spec  
6 of evidence that that every happened. In fact, to the  
7 contrary, Mr. Stephan said it was normal. You'd hear about a  
8 sale going to a VAR and Autonomy is still trying to sell it.  
9 And this -- remember, this is what Mr. Egan described as being  
10 in a hole. Because each quarter you pretend you've sold it  
11 because you've stashed it with the VAR. Yeah, you've made  
12 delivery, which means you've sent them some software, which  
13 means probably today still out in cyberspace somewhere there is  
14 millions of dollars of software floating around that the VAR  
15 has never had any purpose for because they never went on and  
16 resold it.

17 But your sales staff is still working hard at it. That's  
18 how you know that Mr. Hussain knew that these deals were not  
19 real. Because otherwise, if you're the head of sales, you say  
20 "Quit doing that. Discover Tech's doing that. MicroTech's  
21 doing that. FileTek's doing that." You say, "Go sell to a new  
22 customer. Let's make some real money here. We've already sold  
23 that." That's how you know Mr. Hussain knew these were not  
24 at-risk deals.

25 Matt Stephan knew it and he was not the head of sales. He



1 was just hanging around in finance and paying attention.

2 Mr. Hussain knew that's not how sales were supposed to  
3 work.

4 Ms. Anderson, again, testified about -- in one of the  
5 responses in the audit committee reports, about this, you  
6 know -- the sale being reversed and coming back and Autonomy  
7 making them whole for it. And she said she actually spoke with  
8 Mr. Hussain about that. That's a discussion Deloitte had with  
9 Mr. Hussain in the first quarter of 2010 which is that if this  
10 is a practice, if there was a practice of risks and rewards not  
11 transferring, then that's a problem.

12 Ms. Anderson had this exact conversation with Mr. Hussain.  
13 He told her, "Oh, hey, no problem," but he knew this was going  
14 on, ladies and gentlemen. There is no way he didn't know, as  
15 we just talked about. So he knew this was a problem. He knew  
16 these deals were bogus.

17 Mr. Hussain told them keep doing it, basically.

18 Mr. Stephan raises his concerns with Mr. Chamberlain.  
19 "These are a problem." He says, "Terrible deals. We can't  
20 recognize them." He then said what he really said and then he  
21 talked to Chamberlain and Chamberlain says, "It's Mr. Hussain's  
22 calls and we have to go through the motions." And then they  
23 kind of make up some reasons for it. You know, they were small  
24 and so on.

25 And then there's also the part where Mr. Stephan raises

1 the same issue, and here he says the deals were garbage, not  
2 worth the paper they're printed on. And Chamberlain says,  
3 "It's not our call. It's Mr. Hussain's call. We just need to  
4 do our job and put it to the auditors."

5 And, "Did he say anything about Mr. Hussain ordering this  
6 to happen and Mr. Hussain being responsible?"

7 "That was always his -- his stance was like troops in an  
8 Army. The general says what to do and we have to follow our  
9 orders, so, yes."

10 So Mr. Hussain was saying -- when it was brought to his  
11 attention these are bad deals, and he was saying "keep doing  
12 them, keep going." So you know he knew these deals were bogus.

13 I just want to remind you that one of the representations  
14 to the auditors -- and you're going to get a lot of this kind  
15 of "how do you know Mr. Hussain really knew?" Well, first of  
16 all he is the CFO, he's the head of sales, he's supposed to be  
17 paying attention to what's going on. You know he was paying  
18 attention to what's going on because of those spreadsheets, and  
19 believe me, I'm not going to break those back out, but if you  
20 want to just take a spin through those spreadsheets, one minor  
21 point.

22 The point was made by Mr. Keker that there is that long  
23 spreadsheet, 22,000 entries in that one spreadsheet that they  
24 put into evidence and they counted up the total number of deals  
25 and -- one second. I will tell you the exhibit number, just in

1 case you actually want to recheck. I'm sorry. I have lost  
2 track of that. I will try to make it back to it.

3 But if you actually take a look -- yes, there are 22,000  
4 lines in that exhibit, but if you actually take a look at the  
5 number of deals that are in excess of a million dollars, in  
6 other words, the big deals, like all deals are not equal, there  
7 is maybe 200, and if you look at over 2 million, it's about a  
8 hundred, and if you take a look at over 4 million, it's maybe  
9 like 60 over the course of two and a half years.

10 So that 22,000 number is a very deceiving number. That's  
11 all of the deals, period, that Autonomy does, but when you  
12 break it down to the million-dollar deals, it fits what's in  
13 the spreadsheet. It makes sense. So he was tracking all of  
14 that through the spreadsheets.

15 How else does he know they're bogus? We've already talked  
16 about this a lot, but he makes everybody whole. And who is in  
17 charge of expenses at Autonomy? Mr. Stephan said, "I wasn't  
18 looking after the payables, but everything in the costs side  
19 was very tightly managed. You needed senior approval all the  
20 way up to Dr. Lynch," which would of course include  
21 Mr. Hussain.

22 Mr. Scott said, "I needed to get approval on any  
23 purchases, and the practice was to get Sushovan and, I believe,  
24 Mike's on all deals over 20K. All purchases over 20K required  
25 both Sushovan Hussain's and Mike Lynch's approval." You

1 actually saw on the purchase order it actually says everything  
2 over like 500 pounds. But all of our deals are well over  
3 \$20,000.

4 And you also heard about this phrase "management deals,"  
5 and that's on -- you saw that on Mr. Hussain's spreadsheet,  
6 "management deals," and Mr. Stephan told you management deals  
7 that -- that it's not a deal being done by the sales team; in  
8 other words, it's with a reseller and so on. I'm going to get  
9 back to this phrase "management deals," but Mr. Hussain can  
10 kept track of that on his spreadsheets.

11 So he knew actually what was happening with the sales. He  
12 was in control of the expenses. He was the guy responsible to  
13 make all of these VARs whole if, in fact, it fell through, and  
14 that's exactly what the evidence has shown that he did.

15 And this document, I know you saw it a -- a lot of it, but  
16 I want you to just, for a moment, think about the significance  
17 of this, and when I said this is like a guy getting struck by  
18 lightning many, many times. Each of these deals get made whole  
19 on the other side. This is an accountant. This is a  
20 spreadsheet guy. You've seen these massive spreadsheets. This  
21 is a guy who's keeping track of -- he's in the best position of  
22 "what deals are we doing, how are we doing them because are our  
23 salespeople still hustling them after it's supposedly been  
24 done, how are we managing those folks and then what are we  
25 spending?"

1 And magically somehow, magically, ladies and gentlemen,  
2 this all comes together. And you've seen the flurry of  
3 activity, you've heard about some of the ridiculous deals at  
4 the very tail end as HP is coming in to acquire Autonomy, that  
5 there's just no way this happens by chance or bad luck. That's  
6 why I say he's not the unluckiest guy on earth. It's not like  
7 he's been struck by lightning umpteen times.

8 And you take a look at the baseline, at the dollar  
9 figures, and again, what that means is he's making them whole,  
10 and then a little -- plus the little bit.

11 And if you recall, there's a very consistent 10 percent  
12 figure from all of the VARs on these funky, bogus deals, and  
13 they all talked about, you know, a little something -- because  
14 of course you're not going to hold this resale, not be able to  
15 resell it for nothing, and so it worked out to around 10  
16 percent. So they've got to kick in some extra money as well,  
17 and that's why it cost \$215 million to raise 190 million in  
18 revenue.

19 **MR. KEKER:** Excuse me, Your Honor. We're 45 minutes.

20 **MR. FRENTZEN:** I'm sorry, Your Honor.

21 I will then fly, ladies and gentlemen.

22 The VAR deals are bogus. Making them whole again was  
23 bogus. The evidence has shown that irrefutably.

24 The accountants -- and I could go through all of this.  
25 You've heard it. You sat here. You were through it.

1 Welham, everything he was confronted with that you've now  
2 heard happened, he said, "No. I would not have done that."

3 Anderson said, "I would not have done that and now when I  
4 did the restatement -- when I did the restatement, I recognized  
5 that this was an error."

6 So, again, all of the accounting.

7 And a very important issue just with the accountants,  
8 Mr. Hussain is going to tell you he wants to hide behind --  
9 Mr. Keker has told you --

10 **MR. KEKER:** Mr. Hussain is not going to say anything.  
11 We had --

12 **THE COURT:** I think he misspoke.

13 **MR. FRENTZEN:** Mr. Keker, I'm sorry.

14 Mr. Keker has told you that you can rely on the -- that he  
15 could rely on the auditors. That's not exactly how it works.

16 You've got this instruction. It will be back there for  
17 you. And I want to point you to this part.

18 "For there to be good faith reliance on Deloitte's advice,  
19 the defendant, before acting, must have made full and truthful  
20 disclosure of all material facts to Deloitte."

21 And you heard from the Deloitte auditors. They didn't get  
22 all material facts.

23 **MR. KEKER:** Your Honor, we made an agreement about  
24 time, and I object.

25 **THE COURT:** Well, I think he is finishing up.

1           **MR. FRENTZEN:** "Received Deloitte's" --

2           **THE COURT:** I will give you five more minutes. Just  
3 conclude in five more minutes. Okay?

4           **MR. LEACH:** Thank you, Your Honor.

5           Received Deloitte's advice as to the specific course of  
6 conduct that was followed. And he actually -- Mr. Hussain did  
7 not. And he was told, among other things -- and this relates  
8 to the hardware -- I will get into the hardware. I apologize  
9 for taking so long.

10          On the hardware, he was advised by the auditors that --  
11 repeatedly -- and these are in the documents 1509, 1183, 979,  
12 271 -- that they should disclose the hardware and that it might  
13 affect their operating, this single operating segment.

14          And this is important because at this point, they say --  
15 or they are saying -- Autonomy is saying "we're now a reseller  
16 of hardware and we want to take a certain cut on what we owe,"  
17 and Autonomy's response is -- sorry -- "given the increasing  
18 significance of hardware sales to the group's revenues and the  
19 resultant impact on the gross and operating margin of the  
20 quarter and full year results, we expect appropriate  
21 explanation to be given in the 2010 annual report."

22          They also recommended that they actually disclose the  
23 hardware sales. Listening to an auditor's advice and ignoring  
24 it but the auditor still signing off is not the same as  
25 following an auditor's advice. You heard the term "negative

1 assurances." That means Deloitte has to spot check. Deloitte  
2 comes in and says "you might want to do this different."  
3 Autonomy ignored that. Mr. Hussain ignored that. They told  
4 them this might affect your single operating segment; they  
5 didn't do it.

6 Why did they try and fight so hard not to disclose the  
7 hardware? Ladies and gentlemen, they did it for the reasons  
8 we've talked about.

9 It is not just random happenstance that again and again  
10 and again with the analysts, to the public, and then to  
11 Hewlett-Packard, Mike Lynch lies about the hardware, Sushovan  
12 Hussain lies about the hardware. Sushovan Hussain himself says  
13 in those emails that you saw -- we went through them with  
14 Special Agent Bryant and yesterday -- cut out the end users for  
15 the hardware, take the hardware out of the Top 40 as the end  
16 result.

17 Is that just chance again? Just random chance? No. They  
18 knew what the hardware meant to Hewlett-Packard. It meant,  
19 along with all of these bogus VAR deals, that Sushovan Hussain  
20 was cooking the books.

21 I want you, before I break, to just think about one last  
22 thing. The time period. This case involves fraud that begins  
23 in the first quarter of 2009. In the first quarter of 2009,  
24 ladies and gentlemen, the financial crisis had just occurred.  
25 Folks were in shock. Autonomy has nothing to do with the cause



1 of the financial crisis nor does Sushovan Hussain. But I want  
2 you to think if there were a time period in which you would  
3 expect corporations to be cautious, to be careful about their  
4 accounting, to think about the effects of their activities.  
5 And it's this very first quarter of 2009, within months of the  
6 financial collapse in 2008, that Sushovan Hussain and Autonomy  
7 decide "let's pretend that we're defying gravity, let's pretend  
8 that the financial crisis is not affecting us, and let's start  
9 cooking our books right now when we should have learned a  
10 lesson."

11 And if I may, one last document, Your Honor.

12 I just want to talk about whether or not all of this  
13 argument about whether or not sales of hardware would have  
14 mattered to Hewlett-Packard, and I refer you, ladies and  
15 gentlemen, to the Defense star witness. I can say she was a  
16 star witness because it was the one witness, Ms. Lesjak, Cathie  
17 Lesjak. And they brought her in here to try to say  
18 Hewlett-Packard was in disarray, Hewlett-Packard was fighting  
19 and so on.

20 Well, two people there were fighting --

21 **MR. KEKER:** That's five minutes, Your Honor.

22 **MR. FRENTZEN:** You heard about it. It was  
23 Mr. Apotheker and Ms. Lesjak.

24 **MR. KEKER:** And we object.

25 **MR. FRENTZEN:** But at the very close of the case,

1 these two folks -- and she was brought in here to tell you how  
2 problematic it was.

3 And what you can see is what that dispute was about was  
4 really the timing and the price. But she told you they were  
5 both operating on the same premise, which is that a  
6 publicly-traded company is not cooking its books. That they  
7 could rely on the value. And she didn't dispute the value, as  
8 they understood it.

9 But what brought these two people together, the one thing  
10 it looks like they could agree on, is what Ms. Lesjak told you:

11 "If you'd known what was going on ..."

12 "Absolutely. And I'm confident that if I had known about  
13 the fraud and that Leo had known about the fraud, we wouldn't  
14 have done the deal."

15 That was it, ladies and gentlemen.

16 Please give careful consideration to the evidence. I'm  
17 sorry this has been rushed in terms of my presentation.

18 I appreciate the Court's indulgence.

19 We ask that you find Mr. Hussain guilty for what he did.  
20 This is about his conspiracy, not some wacko conspiracy that  
21 involves Hewlett-Packard and every witness who came in here to  
22 testify.

23 **THE COURT:** Thank you, Mr. Frentzen.

24 **MR. KEKER:** I have one --

25 **THE COURT:** I want to instruct the jury and then I'll

1 take any other comments.

2 **MR. KEKER:** I meant one minute to rebut that --

3 **THE COURT:** No. I am going to instruct the jury now.

4 "Ladies and gentlemen, when you begin your deliberations,  
5 elect one member of the jury as your foreperson who will  
6 preside over the deliberations and speak for you here in court.  
7 You will then discuss the case with your fellow jurors to reach  
8 agreement, if you can do so. Your verdict, whether guilty or  
9 not guilty, must be unanimous.

10 "Each of you must decide the case for yourself, but you  
11 should do so only after you've considered all the evidence,  
12 discussed it fully with the other jurors, and listened to the  
13 views of your fellow jurors. Do not be afraid to change your  
14 opinion if the discussion persuades you that you should, but do  
15 not come to a decision simply because other jurors think it is  
16 right.

17 "It is important that you attempt to reach a unanimous  
18 verdict, but, of course, only if each of you can do so having  
19 made your own conscientious decision. Do not change an honest  
20 belief about the weight and effect of the evidence simply to  
21 reach a verdict.

22 "Perform these duties fairly and impartially. Do not  
23 allow personal likes or dislikes, sympathy, prejudice, fear or  
24 public opinion to influence you. You should also not be  
25 influenced by any person's race, color, religion, national

1 ancestry, gender, profession, occupation, economic  
2 circumstances, or position in life or in the community. It is  
3 your duty as jurors to consult with one other and to deliberate  
4 with one other with a view towards reaching agreement, if you  
5 can do so.

6 "During your deliberations, you should not hesitate to  
7 reexamine your own views and change your opinion if you become  
8 persuaded that it is wrong. Because you must base your verdict  
9 only on the evidence received in the case and on these  
10 instructions, I remind you that you must not be exposed to any  
11 other information about the case or to the issues it involves.  
12 Except for discussing the case with your fellow jurors during  
13 your deliberations, do not communicate with anyone in any way  
14 and do not let anyone else communicate with you in any way  
15 about the merits of the case or anything to do with it. This  
16 includes discussing the case in person, in writing, by phone,  
17 or electronic means via email, text messaging, or any internet  
18 chat room, blog, website, or other feature. This applies to  
19 communicating with your family members, your employer, the  
20 media or press and the people involved in the trial.

21 "If you are asked or approached in any way about your jury  
22 service or anything about this case, you must respond that you  
23 have been ordered not to discuss the matter and to report the  
24 contact to the Court.

25 "Do not read, watch or listen to any news or media

1 accounts or commentary about the case or anything to do with  
2 it. Do not do any research, such as consulting dictionaries,  
3 searching the internet or using other reference materials, and  
4 do not make any investigation or in any other way try to learn  
5 about the case on your own.

6 "The law requires these restrictions to ensure the parties  
7 have a fair trial based on the same evidence that each party  
8 has had an opportunity to address. A juror who violates these  
9 restrictions jeopardizes the fairness of the proceeding and a  
10 mistrial could result that would require the entire process to  
11 start over.

12 "If any juror is exposed to any outside information,  
13 please notify the Court immediately.

14 "Some of you have taken notes during the trial. Whether  
15 you took notes or not, you should rely on your own memory of  
16 what was said. Notes are only to assist your memory. You  
17 should not be overly influenced by your notes or those of your  
18 fellow jurors.

19 "The punishment provided by law for these crimes is for  
20 the Court to decide. You may not consider punishment in  
21 deciding whether the Government has proved its case against the  
22 defendant beyond a reasonable doubt.

23 "A Verdict Form has been prepared for you. After you've  
24 reached unanimous agreement on a verdict, your foreperson  
25 should complete the Verdict Form according to your

1 deliberations, sign it and date it and advise the clerk that  
2 you are ready to return to the courtroom.

3 "If it becomes necessary during your deliberations to  
4 communicate with me, you may send a note through the clerk  
5 signed by your foreperson or by one or more members of the  
6 jury. No member of the jury should ever attempt to communicate  
7 with me, except by a signed writing, and I will respond to the  
8 jury concerning the case only in writing or here in open court.

9 "If you send out a question, I will consult with the  
10 lawyers before answering it, which may take some time. You may  
11 continue your deliberations while waiting for the answer to any  
12 question.

13 "Remember, you are not to tell anyone, including me, how  
14 the jury stands numerically or otherwise on any questions  
15 submitted to you, including the question of the guilt of  
16 Mr. Hussain, until after you have reached a unanimous verdict  
17 or have been discharged."

18 So, ladies and gentlemen, the case is now in your hands.  
19 In a few minutes, you will receive copies of all the  
20 instructions. You'll receive a copy of the verdict. We are  
21 assembling the exhibits, and they will be made available to you  
22 should you so choose to review any particular exhibit.

23 And so I want to wish you well during your deliberations.  
24 Your timing is up to you. As I said, your fate is in your  
25 hands. And you will now retire.

1 What will become obvious is that one of the jurors,  
2 because of commitments which she advised us at the very outset  
3 of the case, will not be serving, and the first alternate will  
4 take your place.

5 So you may now retire and commence your deliberation.

6 As to the alternates, will the alternates remain here for  
7 a minute. Can you remain with the alternates. Just have a  
8 seat. The alternates can have a seat.

9 No. You are a member of the jury. You may go back.

10 (Jury begins deliberations at 11:53 a.m.)

11 (Proceedings were heard out of presence of the jury:)

12 **THE COURT:** Okay. I have two alternates and one  
13 member. Please be seated. One member who has been discharged.

14 First, I want to -- because this applies to all of you, I  
15 want to thank you all for your service. There's no way of  
16 knowing when and if a verdict will be returned, but it is not  
17 highly unusual that during the course of deliberations,  
18 something occurs with respect to one juror or another and that  
19 you then are required to come in and participate in the  
20 deliberations.

21 If that occurs, then the jury is instructed to commence  
22 deliberations anew, begin anew, if that occurs. So even though  
23 things may have transpired before you got into the jury room,  
24 you will be required to -- they will be required, with you a  
25 member, to commence their deliberations anew.

1 For that reason, you are still under the order of the  
2 Court not to discuss the case with anyone. And that means if  
3 you receive inquiries -- or just the same rules as you've been  
4 assiduously applying for months now are still in effect.

5 If you give your telephone number to Ms. Scott, she will  
6 be able to contact you, if necessary, to participate in the  
7 deliberations.

8 Also she will contact you once the jury has arrived at a  
9 verdict or been discharged. At that point, you are free to say  
10 anything about the case you want or not to anyone who would  
11 listen, but that's a matter entirely up to you.

12 So would you give Ms. Scott the -- your contact  
13 information, if she doesn't have it already, and will you also  
14 give to her your notebooks. If you have notebooks, she will  
15 hold on. She will put them in a file, and should you be  
16 required to participate in jury deliberations, it will be given  
17 back to you to aid you in your deliberations.

18 But let me thank you. On behalf of the counsel on both  
19 sides, they're very appreciative of your service. Both sides  
20 expressed their appreciation and the Court does as well. So  
21 you may retire with Ms. Scott.

22 (Whereupon, Juror No. 10 and the alternate jurors leave  
23 the courtroom.)

24 **THE COURT:** Okay. Let the record reflect the jury has  
25 retired. Anything further?



1           **MR. REEVES:** One thing about the Juror 10.

2           **THE COURT:** I should put that on the record?

3           **MR. REEVES:** Please.

4           **THE COURT:** The parties agreed, at least I understood  
5 that they agreed, that I could excuse Juror No. 10. You know,  
6 interesting enough, as I was thinking about it -- I mean, I did  
7 excuse her along with the other individuals. I don't know  
8 whether she is still, quote, a viable candidate to go into the  
9 jury room or not. I guess if we lose a juror, we can then take  
10 a position. "We," I mean you people can then take a position  
11 as to who goes in next.

12           **MR. KEKER:** I think -- I mean, she's gone.

13           **THE COURT:** She's gone -- she's no more gone -- she's  
14 a little bit further gone than the -- than the other two  
15 because she's actually traveling. Going out of town, coming  
16 back on Monday. Sunday night or Monday. I have no idea where  
17 the case is going --

18           **MR. KEKER:** We don't object --

19           **THE COURT:** Let's deal with that issue later if it  
20 becomes a real issue.

21           Mr. Reeves.

22           **MR. REEVES:** Thank you very much, Your Honor.

23           I think we're all talking about the same thing. I would  
24 like the record at this point to be clear. Juror No. 10  
25 indicated in her questionnaire she had travel plans for

1 April 26. I believe that is what the Court is referring to  
2 with her travel and I believe that's why counsel for  
3 Mr. Hussain does not object. I would like it to be clear on  
4 the record.

5 **THE COURT:** I don't know why --

6 **MR. KEKER:** That's --

7 **THE COURT:** Mr. Keker doesn't have to explain why he  
8 does or doesn't object. Yes, if he objected he would have to  
9 give a reason. If he doesn't object, he doesn't have to give a  
10 reason.

11 **MR. KEKER:** I don't have any objection to excusing  
12 Juror No. 10.

13 But I do have an objection to something that was said in  
14 the rebuttal argument about our only witness, one witness. I  
15 believe that is burden shifting. I wanted -- and I believe  
16 that that is a comment on what we're obligated to do when the  
17 law is otherwise. So I object.

18 **MR. FRENTZEN:** That was not. It was intended to  
19 reflect that this was an important witness to them.

20 **THE COURT:** An important what?

21 **MR. FRENTZEN:** An important witness to them, which is  
22 a common thing.

23 **THE COURT:** Okay.

24 **MR. KEKER:** So that makes a lot of sense. To say they  
25 only called one witness and that the reason for saying that is

1 to indicate that it's an important witness, I don't think so.  
2 But anyway ...

3 **MR. FRENTZEN:** I said "star witness."

4 **MR. KEKER:** We object.

5 **MR. FRENTZEN:** I said "star witness." That was my  
6 point. I was emphasizing --

7 **MR. KEKER:** I think he is digging himself a hole.

8 **THE COURT:** I don't know whether he was.

9 **MR. FRENTZEN:** I was emphasizing --

10 **THE COURT:** I was sitting up here trying to figure out  
11 what -- it's an accounting case, and they put on X number of  
12 accountants and they say, "Those number of accountants have  
13 established these are the rules or this is how the evidence  
14 should be viewed." Can the Government say, "And, by the way,  
15 the Defense didn't call a single witness to refute these  
16 accountants"?

17 **MR. FRENTZEN:** I didn't say that --

18 **THE COURT:** No. He didn't say it, but I'm just trying  
19 to figure out is that burden shifting? I mean, I'm not sure it  
20 is. It's not the situation that I'm facing. But I don't know  
21 that -- that that's necessarily burden shifting.

22 You know, I think the evidence is that it was sunny in  
23 San Francisco on October 3rd from the -- what the Government  
24 has shown. And can the Government come in and say, you know  
25 "They didn't bring in a single witness to show that it was dark

1 on October 3rd" or something. I think you can do that, but  
2 it's not this case.

3 Anyway, the failure -- if the Government is foreclosed  
4 from ever saying about the quality of the evidence that is not  
5 in the record or is in the record but hasn't been rebutted,  
6 I -- I -- I think that you can make an argument that everything  
7 is burden shifting.

8 **MR. KEKER:** We respectfully disagree --

9 **THE COURT:** Disagree with me.

10 **MR. KEKER:** -- but hope we never have to argue about  
11 it.

12 **THE COURT:** Anyway, fair enough.

13 **MR. FRENTZEN:** If I could --

14 **THE COURT:** I'm ruminating and that's always  
15 dangerous, but that is just the way I sort of look at it, and  
16 maybe we -- this wasn't burden shifting. Okay. End of that  
17 discussion. Now I just am -- everything else is dicta.

18 **MR. FRENTZEN:** Can I add one thing, understanding that  
19 they may eventually make that argument? It was --

20 **THE COURT:** Oh, they will make that argument. If  
21 there's a conviction, they'll make that argument.

22 **MR. FRENTZEN:** It was responsive, Your Honor, to the  
23 dueling accountants, battle of accountants, the Cochran quip,  
24 and so, you know, there we are.

25 **THE COURT:** There we are.

1           **MR. KEKER:** Your Honor, what is your pleasure for us?

2           **THE COURT:** I think you all ought to stay in this  
3 courtroom -- no. Well, as you know, I'm leaving. I told you  
4 I'm out of here.

5           **MR. KEKER:** Can we come with you?

6           **THE COURT:** I think -- here is the situation. If --  
7 obviously any kind of note, other than something so  
8 inconsequential -- sometimes they say, "Can we please get a  
9 transcript of the proceedings?" I'll tell you about it, but I'll  
10 answer it without any input.

11           But there are -- anything more that is more substantive,  
12 of course I need your input.

13           So you have to -- somebody has to remain here. Somebody  
14 from your team has to remain here.

15           **MR. KEKER:** Okay.

16           **THE COURT:** Okay. And just tell Lashanda where you're  
17 going to be.

18           I assume you have gone through all the exhibits. We are  
19 not going to have a situation where there is some exhibit in  
20 there that nobody checked out. I've had that from the  
21 Government before.

22           **MR. FRENTZEN:** It wasn't me.

23           **MR. KEKER:** We've worked pretty hard on the exhibits.  
24 I think they're right. We'll see.

25           Anyway, we will be in the Charles R. Breyer Attorneys'

Lounge.

**THE COURT:** Be sure that there are no bugs in it and, you know, overhear devices. You know, they sometimes have tape recorders around courthouses. Did you know that?

**MR. KEKER:** So I heard.

**THE COURT:** Sometimes. Sometimes.

**MR. KEKER:** I'm an American citizen so I don't have to worry about that.

**THE COURT:** Okay. We're all set, Lashanda? Do you have everything you need from them? Okay. Thank you.

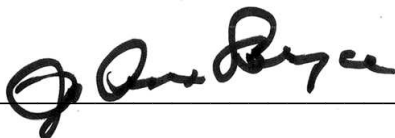
(Jury left for day at 3:00 p.m.)

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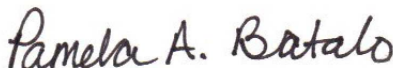
**CERTIFICATE OF REPORTERS**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Tuesday, April 24, 2018



Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR  
U.S. Court Reporter



Pamela A. Batalo, CSR No. 3593, RMR, FCRR  
U.S. Court Reporter